TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1927

No. [redacted] 67

CITY OF HAMMOND, PETITIONER,

vs.

SCHAPPI BUS LINE, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1928

CERTIORARI GRANTED OCTOBER 11, 1928

(31,951)

(31,951)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 385

CITY OF HAMMOND, PETITIONER,

vs.

SCHAPPI BUS LINE, INC.

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1 Placita.

Pleas and proceedings had in the District Court of the United States for the District of Indiana begun, and holden, at the United States court house in the City of Hammond, in said District before the Honorable Thomas W. Slick, one of the judges of said District Court.

United States of America } ss:

IN THE UNITED STATES DISTRICT COURT

For the District of Indiana

Schappi Bus Line, Incorporated, a corporation, *Plaintiff*,
vs.
City of Hammond, a municipal corporation, *Defendant*.
} No. 29 in Equity at Hammond.

COMPLAINT FOR INJUNCTION.

Be It Remembered That Heretofore, to-wit:—on the 28th day of July, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, the following proceedings in the above entitled cause were had, to-wit:

Comes now the plaintiff, Schappi Bus Line, Incorporated, a corporation, and files herein its verified complaint for injunction, which complaint is in words and figures following, to-wit:

2 PLAINTIFF'S EXHIBIT 1.

* * * * * *

The plaintiff complains of the defendant and says:—that plaintiff is a corporation duly organized and doing business under and by virtue of the laws of the State of Illinois; that, its full corporate name is: Schappi Bus Line, Incorporated; that, as such corporation, it is a citizen and resident of the State of Illinois; and has its principal and only offices in said State; that, the defendant City of Hammond is a municipal corporation duly organized and existing, as such municipal corporation, under and by virtue of the laws of the State of Indiana; and, as such municipal corporation, exists only in and within the State of Indiana as such municipality, and not otherwise.

Plaintiff further says, that, this plaintiff is engaged in business as a common carrier of passengers for hire, from the City of Chicago in the State of Illinois to the City of Hammond, and other points in and within the State of Indiana, by means of motor busses owned and operated by it on, upon, and over, the public highways of said States of Illinois and Indiana, between the said City of Chicago in the State of Illinois, and the City of Hamond in the State of Indiana, and other points in the State of Indiana; that, plaintiff's principal business is the carrying of through passengers only, that is to say: that, plaintiff is engaged chiefly in carrying passengers from Chicago, Illinois, to the City of Hammond, Indiana, and other points in and within the State of Indiana, and in carrying passengers from the City of Hammond, and other points in the State of Indiana, to the City of Chicago, Illinois; that except as hereinafter otherwise stated, it does not, and has not at any time, engaged in local or intra-state carrying of passengers; that, it accepts passengers only, who desire passage and convey-

3 ance from the State of Illinois into the State of Indiana, and from the State of Indiana into the State of Illinois; that, its business is strictly interstate, and not otherwise; that, the terminal point at which plaintiff delivers passengers in the City of Chicago, Illinois, and from which plaintiff starts its motor busses in the carrying of passengers from Chicago, Illinois, into the State of Indiana, is, to-wit:—at the intersection of South Park Avenue and 63rd Street in

the City of Chicago, Cook County, Illinois, at which point this plaintiff, by means of its motor bus transportation, as aforesaid, delivers its passengers to and receives passengers from the Chicago Elevated Railway System.

And, plaintiff further says: that, from said point in the City of Chicago, Illinois, it carries its said passengers southward on South Park Avenue, one of the public streets of said City of Chicago, to South Chicago Avenue; by way of South Chicago Avenue; 95th Street; Ewing Avenue; and 106th Street, to Indianapolis Boulevard and the Indiana State Line, and over Indianapolis Boulevard in the City of Hammond and in the State of Indiana; Calumet and Sheffield Avenues; Hohman Street, and other public streets in the City of Hammond, and in the State of Indiana, delivering its passengers at such points in the City of Hammond as the passengers desire to alight when such point is arrived at; that, the principal point at which passengers are delivered is, on Hohman Street near State Street in said City, in front of the Indiana Hotel, one of the principal hotels in the City of Hammond, Lake County, Indiana; that, each and all of said streets over which plaintiff operates its said motor busses from said point in the City of Chicago, Illinois, to the City of Hammond, at and in front of said Indiana Hotel, as aforesaid, are each and all public highways; that said public highways have been constructed at public expense; in part, by the State of Indiana; in part, by the resident property owners whose property abutt upon said streets, by means of special assessments levied upon the abutting property; and, in part, as this plaintiff is informed and so alleges the fact to be, by means of Federal aid out of the funds appropriated by the United States Government for road building purposes in conjunction with the several states of the Union; that, said route above described is the most direct, popular, and serviceable route between the said City of Chicago, Illinois, and the said City of Hammond, Indiana.

That, plaintiff also receives and accepts passengers, wishing to be carried from the City of Hammond, Indiana, and from points within said City of Hammond, Indiana, to Chicago, Illinois, delivering such passengers at its terminal point aforesaid in the City of Chicago, Illinois; that,
4 plaintiff, in the operation of its said bus line, has so arranged its schedule that one bus leaves 63rd Street and South Park Avenue in the City of Chicago, Illinois, at 6:00 o'clock A. M. on each day, and an additional bus leaves said

point every twenty (20) minutes thereafter, until 1:00 o'clock A. M. of the following day, for Hammond, Indiana; that, likewise, at 6:00 o'clock A. M. one bus starts from the intersection of State and Hohman Streets in the City of Hammond, immediately in front of, and adjacent to, said Indiana Hotel, for Chicago, Illinois, and one additional bus starts every twenty (20) minutes thereafter until 12:00 o'clock midnight of said day, thus giving, between said points, twenty-minute service each way throughout the entire business day; that, for such service and carrying passengers as aforesaid, plaintiff charges its passengers a fare of twenty-five ($.25) Cents for each passenger over the age of twelve (12) years, and one-half (½) of said sum for children under the age of twelve (12) years; that, plaintiff does not accept passengers, on the trip going from Hammond, Indiana, to Chicago, Illinois, who wish to alight at any point within the City of Hammond, or the State of Indiana; and, plaintiff does not accept passengers on the trip from Chicago, Illinois, to the City of Hammond, who wish to alight at any point within the City of Chicago, or the State of Illinois, but accepts only through passengers, as aforesaid.

That plaintiff's said busses, used in said service, are of the latest approved type of motor busses, sufficiently large to carry twenty-five (25) adult persons in each bus; and said busses, in their regular schedule, each make said trip from Hammond to South Park Avenue and 63rd Street in the City of Chicago in forty (40) minutes from the time of leaving; and, likewise, make the trip from South Park Avenue and 63rd Street in the City of Chicago to the business portion of the City of Hammond, Indiana, in forty (40) minutes.

That, plaintiff carries on its said busses over said line daily approximately fifteen hundred (1500) people as passengers; that, plaintiff has procured motor bus licenses, automobile licenses, and vehicle licenses, all as required by the laws of the State of Illinois and the State of Indiana, for all busses, and is ready, able, and willing to comply with all valid and reasonable regulations in the mode, manner, and speed regarding the operation of said busses over said public highways, and has at all times endeavored to fully comply with all valid existing state laws, rules, and regulations governing the operation of motor busses over, along, and upon said public highways in the said State of Illinois, and in the said State of Indiana.

5 That, plaintiff began the operation of said bus line from the City of Chicago, as aforesaid, to the City of Hammond on the 9th day of April, A. D. 1925, and has operated said bus line, and number of busses as hereinabove alleged, daily ever since said date, and is now operating the same.

And, plaintiff further says, that, on the 25th day of May, A. D. 1925, it filed with the Public Service Commission of Indiana, its written verified application for Certificate of "Public Convenience and Necessity" to operate its said auto busses, as common carriers of passengers from said City of Hammond, Indiana, to Chicago, Illinois, doing only interstate business over said line, as aforesaid; and over said streets, as aforesaid; and with its application, filed with said Public Service Commission, a policy of insurance, as required by the laws of the State of Indiana, with the Hartford Accident and Indemnity Company of Hartford, Connecticut, all as required by the laws of said State.

Tht afterwards, on the 6th day of June, A. D. 1925, a public hearing was had before said Public Service Commission, in the City of Indianapolis; and the said defendant City of Hammond appeared before said Public Service Commission, by its City Attorney, and all other persons, who wished to protest against said petition and the granting of such Certificate, likewise appeared; and said Public Service Commission of Indiana heard the evidence, and, after hearing the evidence, and being sufficiently advised, duly found in favor of this plaintiff, and granted to said plaintiff a Certificate of "Public Convenience and Necessity" on the 24th day of July, A. D. 1925; that, said finding of said Public Service Commission is now in full force and effect, and was duly given; and, said Certificate of "Convenience and Necessity" was duly issued by said Public Service Commission to this plaintiff, and is now in full force and effect, authorizing, and empowering, and granting permission to this plaintiff to continue the operation of its said auto busses in the carrying of passengers for hire, between the Cities of Hammond, Indiana, and Chicago, Illinois, all as aforesaid.

And, plaintiff further says, that, in addition to the bus line and service above carried on by this plaintiff between the cities of Chicago, Illinois, and Hammond, Indiana, as aforesaid, it also operates and maintains a line of busses from Calumet City, Illinois, into the State of Indiana, through the said City of Hammond into, and through, a part of the

City of East Chicago in said State of Indiana; that, on said bus line from Calumet City to East Chicago, as aforesaid, this plaintiff also maintains a similar service, giving twenty-minute service over its said line, and over the public streets leading from Calumet City, Illinois, to East Chicago, Indiana; that, to carry on this service, it operates two additional busses of similar make, capacity, and speed; and, on said route, it carries approximately seven hundred (700) people daily.

And, plaintiff further says, that, it began operating said bus line from Calumet City into the City of Hammond, through the City of Hammond, to the City of East Chicago, more than ninety (90) days prior to the taking effect of Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925, and continued to operate, and still continues to operate said bus line; that, on the 25th day of May, 1925, plaintiff filed with the Public Service Commission of Indiana, a verified ninety-day application for a Certificate of "Public Convenience and Necessity" for the operation, by plaintiff, of motor vehicles as common carriers of passengers for hire on, and upon, said public highways in the State of Indiana, pursuant to the conditions and provisions of said Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925; and, that, thereafter, upon full hearing, on the 5th day of June, 1925, the Public Service Commission of Indiana approved said petition and granted to this plaintiff a Certificate of "Public Convenience and Necessity," authorizing, and directing, and permitting this plaintiff to continue to so transport passengers as a common carrier for hire upon the public highways of the State of Indiana over the following route, to-wit:

"From Indiana State Line to East Chicago, Indiana, passing through Hammond over the following route: Leave Garfield Avenue and Harrison Street; East on Garfield to Lincoln; South on Lincoln to 154th Street; East on 154th Street to Forsythe; South on Forsythe to 156th Street; East on 156th Street to Hohman; North on Hohman to State Street; East on State Street to Calumet Avenue; North on Calumet to 150th Street; East on 150th to Forsythe (East Chicago); North on Forsythe to Chicago Avenue; East on Chicago Avenue to Euclid Avenue; North on Euclid Avenue to General American Tank Car Corporation,"

and to use, in such transportation, the motor vehicles de-

scribed in its application, to-wit:—auto busses, as aforesaid.

7 That, further, in compliance with said law and the Acts of the General Assembly for the year 1925, as aforesaid, this plaintiff filed with the Public Service Commission of Indiana its policy of insurance, executed by the Hartford Accident & Indemnity Company of Hartford, Connecticut, containing insurance indemnities as required by law, and not to exceed Fifty Thousand ($50,000.00) Dollars, all as required by said Acts of the General Assembly for the year 1925, and the laws of said State of Indiana; that, said Certificate of "Public Convenience and Necessity," so issued by the Public Service Commission of Indiana to this plaintiff, is now, and at all times since June 5, 1925, has been, in full force and effect, and that the same was duly issued, as aforesaid, by said Public Service Commission of Indiana to this plaintiff, and that plaintiff is now operating its said motor busses in the carriage of passengers, as aforesaid, under, pursuant to, and in accordance with the provisions of said Certificate of "Public Convenience and Necessity," and the provisions of said law, to-wit: Chapter 46 of the Acts of the General Assembly of the State of Indiana, as aforesaid; that, said finding of said Public Service Commission was duly given, and said Certificate was duly issued in pursuance thereof.

And, plaintiff further says, that also, more than ninety (90) days prior to the taking effect of said Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925, as aforesaid, this plaintiff had been engaged in the operation of a motor vehicle, auto bus, as a common carrier of passengers for hire upon certain public highways in the State of Indiana, and within the City of Hammond in said State; and, that, on the 25th day of May, 1925, this plaintiff filed its petition with the Public Service Commission of Indiana for a Certificate of "Public Convenience and Necessity" to operate, and to continue to operate, said motor vehicle as a common carrier for hire over the public highways of the State of Indiana, in, and within, the City of Hammond, as aforesaid, in pursuance, and in accordance with the conditions and provisions of said Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925, as aforesaid.

And, plaintiff further says, that, thereafter, on the 26th day of June, 1925, said Public Service Commission approved

said petition, and granted to this plaintiff a Certificate of "Public Convenience and Necessity," authorizing this plaintiff to operate, and continue to operate and transport passengers for hire as a common carrier on the public highways of the State of Indiana, over the following route, to-wit:—
from Hammond, Indiana, to the Indiana-Illinois State
8 Line, and to use in such service, by this plaintiff, the
motor vehicles described in said petition, to-wit:—auto busses, owned and operated by this plaintiff; that, said Certificate of "Public Convenience and Necessity" was duly issued by said Public Service Commission, and ever since said 26th day of June, 1925, has been, and is now, and at all times since said date has been, in full force and effect; that, this plaintiff is now operating its said motor busses under, and in pursuance to, said Certificate of "Public Convenience and Necessity" over the public highways in, and within, the said City of Hammond, and from the City of Hammond, Indiana, to the Indiana-Illinois State Line, pursuant to said Certificate of "Public Convenience and Necessity," as aforesaid; that, said finding was duly given, and said Certificate duly granted by said Public Service Commission; that, each and all of said Certificates are now, and ever since the issuing thereof, have been, in full force and effect.

And, plaintiff further says, that, plaintiff employs as drivers of its said motor busses, competent, and efficient, and licensed chauffeurs, who drive and operate the same as the employees of this plaintiff; and, that, it has so employed such competent, and efficient, and licensed chauffeurs from the time of beginning of the operation of its busses, as aforesaid, to the present time, and is now so employing only such drivers and chauffeurs to operate said busses.

That, the City of Hammond is a municipal corporation with a present population of approximately sixty thousand (60,000) people; that, the City of East Chicago is a municipal corporation with a present population of approximately fifty thousand (50,000) people; that, contiguous to said City of Hammond and the City of East Chicago, is the City of Whiting, also in the State of Indiana, with a present population of approximately ten thousand (10,000) people; that, Calumet City, Illinois, is a municipal corporation, situated in the State of Illinois, with a present population of approximately fifteen thousand (15,000) people; that, the City of Chicago, Illinois, is a municipal corporation with an approximate pres-

ent population of at least three million (3,000,000) people; that, by reason of the aforesaid facts, a great amount of interstate traffic takes place daily between said cities; that, plaintiff established said bus line to meet the needs, and supply the needs of the traveling public to and from the Cities of Chicago and Calumet City, Illinois, and to and from the Cities of Hammond, East Chicago, and Whiting, Indiana; that, by reason of the operation of said bus line, as aforesaid, plaintiff has established a regular daily busi-
9 ness, which is profitable to plaintiff, and the number of passengers carried and conveyed by it is daily increasing, and the demand for continued service is daily increasing; that, prior to the beginning of the operation of said bus line by this plaintiff, no other person, or persons, were engaged in a similar line of business between said Cities except the Hammond, Whiting & East Chicago Street Railway Company, which Street Railway Company operated, and still operates, a line of street railway cars from South Park Avenue and 63rd Street in the City of Chicago to the Cities of Hammond, Whiting, and East Chicago, in the State of Indiana; that, said Street Railway Company operates its line of street cars over approximately the same streets and public highways as hereinabove alleged, and over which this plaintiff operates its line of motor bus transportation, as aforesaid; that, said Street Car Company has operated its said line of street cars over said streets, and between said points, for a period of more than twenty-five (25) years last past, and is still so operating the same, but by reason of its inadequate and inefficient equipment, provides an entirely inadequate service for the traveling public between said points, and requiring from an hour and a half to two hours' time to cover the same distance covered by plaintiff's said busses in forty (40) minutes; that, said Street Car Company delivers and discharges its passengers in the City of Hammond on said Hohman Street, near State Street, at approximately the same point where this plaintiff is accustomed to discharge the greatest number of its passengers coming from Chicago, Illinois, to Hammond, Indiana; and, likewise, said street car line discharges the greater number of its passengers in the City of Chicago at said South Park Avenue, and 63rd Street, at approximately the same point where plaintiff discharges the greater number of its passengers; that, in addition to carrying through passengers, however, from Chicago to Hammond, and from Hammond to Chicago, said street car line also car-

ries local passengers, thus doing both an intra-state and also an interstate business in the carrying of passengers.

That, since plaintiff began the operation of its bus line, as aforesaid, the Calumet Motor Coach Company, a corporation, has also began the operation of a bus line between the City of Hammond and the City of Chicago over, and upon, and along the same public highways as those used by plaintiff, and hereinabove described; that, said Calumet Motor Coach Company, also, in addition to carrying passengers to and from Hammond to Chicago and Chicago to Hammond, as aforesaid, also carries local passengers within the City of Hammond; thus, said Calumet Motor Coach Company does, and carries on, both a local or intra-state carrying of passengers as well as an interstate carrying of passengers, and said Calumet Motor Coach Company, in so doing, maintains and operates over said streets, as aforesaid, motor coaches and busses of approximately the same character and description as those used, and operated, and owned by this plaintiff; and, said Calumet Motor Coach Company, as aforesaid, discharges the greater number of its passengers, coming from Chicago to Hammond, on said Hohman Street in said City of Hammond near State Street, and in front of said Indiana Hotel, at approximately the same point where plaintiff discharges its passengers; and, likewise, in the City of Chicago, said Calumet Motor Coach Company discharges its passengers at 63rd Street and South Park Avenue in said City at approximately the same place where this plaintiff discharges its passengers.

That, ever since plaintiff began the operation of its bus line, as aforesaid, it has been its custom and practice to pick up and load passengers on Hohman Street, north of the intersection of State Street, in said City of Hammond, by stopping its busses on the easterly side of said Street, which point is within the business section of said City, and immediately across the street from said Indiana Hotel, which hotel is located on the westerly side of said Hohman Street at the intersection with said State Street in said City; that, to pick up and load the passengers at said point, required this plaintiff, in the operation of its busses, to stop the same at said point for a period of from two to five minutes; that, said Street Car Company, also, in operating its said street car line from Hammond to Chicago, as aforesaid, has, for a period of more than twenty-five (25) years, been accustomed to stop its street cars at said same point, and there pick up

and load its passengers for said trip to Chicago, and also to unload the same on its return trip at said point; that, plaintiff has not at any time stopped its busses at said point for a longer period than was necessary to pick up and load the passengers, who congregated at said point, seeking to take passage on plaintiff's busses to the City of Chicago; and, also, plaintiff has not stopped its busses in front of said Indiana Hotel longer than was absolutely necessary to unload and let off such passengers as wished to alight in front of said hotel, as their destination in said trip from Chicago to said City of Hammond, the approximate time of loading or unloading in each instance being about from two to three minutes, and not exceeding five minutes; that, plaintiff has at no time "parked" or permitted its busses to stop at said point except temporarily and momentarily for the purpose of loading and unloading passengers, and for no other purposes whatsoever; that, said points of stopping for loading and unloading passengers, as aforesaid, is upon the public street and public
11 highway in said City of Hammond at a point approximately one hundred (100′) feet north of the intersection of Hohman and State Streets in said City, two of the principal public streets in said City of Hammond.

Plaintiff further says, that, Calumet Motor Coach Company, since it began the operation of busses from Hammond to Chicago over said same streets used by plaintiff, as aforesaid, has also unloaded passengers on said Hohman Street, and picked up and loaded passengers on said Hohman Street at the self same points hereinabove described, and used by plaintiff, as aforesaid, and has done so daily, and is now doing so, without molestation, or prevention, from said defendant City of Hammond, its officers, agents, and employees; and, so likewise, is said Street Car Company so doing without hindrance or interference from said City of Hammond, its officers, agents, or employees; and, plaintiff says that it has at no time in any way interfered with either said Street Car Line or said Calumet Motor Coach Company in the operation of either said street cars or said busses so operated by said Street Car Company and Motor Coach Company, or any of their passengers or employees, or in any way interfered or hindered either said street car line or said Calumet Motor Coach Company in the unloading or loading and picking up of passengers, as aforesaid; that, plaintiff's schedule is so arranged as to the time of arrival and leaving of its motor busses to and from Chicago, that its said motor busses arrive

at said points for the discharge of passengers and for the picking up of passengers, at times different from the arrival of the busses so operated by said Calumet Motor Coach Company or the Street Cars operated by said Street Car Company, and this plaintiff in no way interferes with the operation of either said street cars or said Calumet Motor Coach Company busses in their several handling of, and carrying of passengers to and from the City of Hammond and the City of Chicago, as aforesaid.

But, plaintiff further says, that, beginning on May 8, A. D. 1925, the said City of Hammond, through its Police Department, undertook to prevent and prohibit plaintiff from loading and unloading passengers at said points on said Hohman Street near State Street, as aforesaid, notwithstanding that said Street Car Company and said Calumet Motor Coach Company were so doing without molestation or hindrance; and, said defendant City of Hammond, through its said police officers, on the 8th day of May, A. D. 1925, arrested each and every driver of plaintiff's motor busses, who, on arriving at Hammond, unloaded or loaded its passengers on said Hohman Street at the accustomed place, as aforesaid, charging the only offense against said employees of plaintiff as
12 being that of "loading passengers"; that, said City of Hammond, through its Police Department, also continued to arrest the employees of this plaintiff, operating its said motor busses, on the 9th day of May, 1925, and on the 10th day of May, 1925, and on the 11th day of May, 1925; in all, arresting approximately fifteen (15) of plaintiff's employees and drivers engaged in the operation of its said motor busses, and charging each with the same alleged offense, namely: "loading pasengers".

And, said defendant City of Hammond, through its said Mayor, Chief of Police, and police officers, threaten to continue the arresting of each and all of the employees of this plaintiff, and by such means threaten to prevent and prohibit this plaintiff from carrying on its business of interstate commerce in the carriage of passengers to and from the said cities aforesaid, by the means, and in the manner aforesaid, and said defendant, through its said Mayor, Chief of Police, and police officers, and Board of Public Works, still threaten to continue said arrests, and interference, and hindrance to plaintiff unless they are enjoined and prohibited from so doing.

And, plaintiff says, that, it is the primary purpose of said

defendant City to hinder and prohibit this plaintiff from carrying on its business of interstate commerce and prevent the carrying of passengers for hire, as aforesaid; that, said defendant City, as a municipal corporation, through its said officers, as aforesaid, has thus discriminated, and is discriminating, and is threatening to discriminate and prohibit entirely this plaintiff from carrying on its business, notwithstanding that at the same time and place, and over the same streets approximately, it permits, and has permitted, without hindrance or prohibition of any kind or character whatsoever, both said Street Car Company and said Calumet Motor Coach Company to carry on the same character of traffic in the carrying of passengers, as aforesaid, by the means which each of said companies provide.

That, said interference of, and by, said defendant City of Hammond, its Mayor, Chief of Police, and police officers, has now already greatly damaged plaintiff and plaintiff's business by reason of the arrest of its employees, as aforesaid, and has put plaintiff to, and has caused plaintiff, a great amount of expense and damage of at least Five Thousand ($5000.00) Dollars, by reason of loss of patrons and good will; and, if said defendant City is permitted to so continue, it will destroy plaintiff's business thus established by it, all to its great and irreparable injury; that, the effect of said interference of said defendant City with plaintiff, by the arrest of said employees and its threatened continuance thereof, is such as to obstruct and prohibit plaintiff
13 from the carrying on of interstate commerce in the carrying of passengers, for hire, as aforesaid, contrary to Section 8 of Article I of the United States Constitution, which provides, that:—

"The Congress shall have power * * * to regulate commerce * * * among the several states" etc.

And, plaintiff says, that, the actions and interference aforesaid of said defendant City of Hammond, through its Mayor, Chief of Police, and police officers, with plaintiff's business, as aforesaid, is in direct violation of said provision of the Unted States Constitution; and, that it is also in violation of the 14th Amendment to the United States Constitution, in that, it seeks to deprive plaintiff of its property without due process of law, and denies to plaintiff, and its patrons, the equal protection of the laws guaranteed by said 14th Amendment to the United States Constitution.

And, plaintiff further says, that, said highways, over which

plaintiff operates its said motor busses, are not unduly congested; that, they are so constructed that they can reasonably and without damage, carry much heavier burdens than those imposed by plaintiff's motor busses; that, the operation of plaintiff's motor busses impose no different or heavier burdens upon the highways over which plaintiff operates its said busses than is imposed by the operation of other vehicles of similar and of the same kind and character, by private persons and individuals, who use the same freely and daily without any hindrance or interference whatever from said defendant City of Hammond, or its officers; that, the nature and character of plaintiff's business is the carrying of passengers for hire, as aforesaid; that, the alleged charge, placed against the employees of plaintiff when arrested, to-wit:—"loading passengers", constitutes no offense against any law,—State, National, or Municipal, and constitutes no public offense of any kind or character whatsoever; but is, in fact, plaintiff says, a mere subterfuge and a groundless charge upon which defendant has caused the employees of this plaintiff to be unlawfully arrested in an effort to prohibit this plaintiff from carrying on its business, as aforesaid, and for the purpose of interfering with this plaintiff in the carrying on of its business, as aforesaid; all of which has been done by said defendant without any right or lawful purpose whatsoever; and, plaintiff says, that, said defendant will so continue to interfere with plaintiff, and the carrying on of plaintiff's business, unless said defendant is restrained and enjoined therefrom.

14 That, the action of said defendant City of Hammond, its officers, employees, and agents, in thus interfering with plaintiff's business, as aforesaid, is unreasonable and is purely arbitrary, and in violation of plaintiff's rights guaranteed to it by the provisions and amendments of the United States Constitution above referred to.

And, plaintiff further says, that, the public highways over which plaintiff operates its said motor busses, have existed continuously as such public highways for a period of more than fifty (50) years last past; and, during such period have been continuously used by the public generally without interference or hindrance, and each of said public highways are now so being used.

That, said defendant City of Hammond, a municipal corporation, its Mayor, Chief of Police, officers and agents, wrongfully and arbitrarily claim the right, notwithstanding

each and all of the aforesaid facts, to arbitrarily arrest plaintiff's said employees, and to prevent plaintiff from carrying on its business in the carrying of passengers for hire between said cities in the State of Illinois and the State of Indiana; and, unlawfully and wrongfully claim the right to prosecute, fine, and imprison plaintiff's said employees, so arrested, for loading and unloading plaintiff's passengers in the form and manner as hereinabove alleged; all of which claims, plaintiff says, are wholly unreasonable, unlawful, wrongful, and arbitrary; that, in truth, and in fact, said defendant City of Hammond, its officers, agents, and servants, are wholly without jurisdiction, power, and authority to in any manner interfere with, or hinder, or attempt to regulate plaintiff's business, the same being under the jurisdiction of said Public Service Commission of Indiana as to the carrying of passengers for hire, as aforesaid. Yet, nevertheless, plaintiff says that said defendant, its Mayor, Chief of Police, officers, and agents, are threatening to, and will continue to, arrest, imprison, fine, and prosecute plaintiff's said drivers and employees unless the said defendant, its Mayor, Chief of Police, officers, agents, and servants, are restrained and enjoined from so doing; all in violation of this plaintiff's rights as aforesaid; that, plaintiff is wholly without any adequate remedy at law, or in equity, save and except to bring this suit for an injunction against said defendant, its agents and employees, by reason of the premises.

Plaintiff further says, that, on the 23rd day of May, 1925, said defendant City of Hammond, by its City Council, passed a purported ordinance, pretending to be an ordinance of the City of Hammond, entitled: "Ordinance No. 1945. An Ordinance Regulating and Routing Certain Vehicles for Hire and Prohibiting Their Use of Certain Streets Within the City of Hammond"; that, said defendant City of Hammond, since the passage of said ordinance, now purports to be acting under said purported ordinance, and by reason of such ordinance purports to have the right to interfere with, and prohibit, plaintiff in, and from, the operation of, and carrying on its business, as described herein; that, said ordinance under which said defendant City now purports to act, is in words and figures following, to-wit:—

"No. 1945.

An Ordinance Regulating and Routing Certain Vehicles for Hire and Prohibiting Their Use of Certain Streets Within the City of Hammond.

Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that in order to promote public safety and order and to diminish the congestion of vehicular travel within said City, from and after the taking effect of this Ordinance, it shall be unlawful for any person, firm, or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon, or over any of the folowing parts of streets within said City of Hammond, to-wit:—

On Hohman Street from Russell Street to Michigan Avenue;

On State Street from Morton Court to Calumet Avenue;

On Sibley Street from the easterly line of the right-of-way of the Chicago, Indianapolis & Louisville Railway Company where the same crosses Sibley Street westerly to Morton Court;

On Fayette Stret from Hohman Street to Oakley Avenue.

Section 2. From and after the taking effect of this Ordinance, it shall be unlawful for any person, firm, or corporation, owning or operating any motor vehicle carrying passengers for hire, to stop such vehicle for the purpose of receiving or discharging passengers upon any street, alley, or other public place within said City; provided, that the Board of Public Works may, for any period not exceeding six
16 months of successions thereof, permit such operation on any or all of the following designated parts of streets: Columbia Avenue between the South city limits and the right-of-way of the Michigan Central Railroad where the same crosses said Columbia Avenue; Sibley Street from Columbia Avenue to the Easterly line of the right-of-way of the Chicago, Indianapolis & Louisville Railway Company; State Line Street from its Southerly terminus to its Northerly terminus at or near the right-of-way of said Michigan Central Railroad aforesaid; Rimbach Avenue from State Line Street to Ann Street; Ann Street from Rimbach Avenue to Russell Street; Russell Street from Ann Street to State Line Street, and for vehicles engaged strictly in interstate commerce any

street or other public place North of 122nd Street and East of Calumet Avenue.

Section 3. Whoever violates any of the provisions of Sections 1 and 2 of this Ordinance shall, upon conviction, be fined in any sum not exceeding Fifty ($50.00) Dollars for each and every offense, but nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party under which such motor vehicles are now operated for hire within said City. Nothing herein shall apply to taxicabs.

Section 4. This Ordinance shall supplement such ordinances as are now in force, and repeal only so much of them or any part thereof as may be in direct conflict herewith.

GEO. J. WOLF,
President.

Attest:
ARNOLD H. KUNERT,
City Clerk.

Submitted to the Mayor for his approval this 23 day of May, 1925.

Approved by me the 23 day of May, 1925.

DANIEL BROWN,
Mayor.

State of Indiana }
County of Lake } ss:

I, Arnold H. Kunert, City Clerk of the City of Hammond, Indiana, do hereby certify that the foregoing is a true,
17 complete, and correct copy of Ordinance No. 1945, entitled: "An Ordinance Regulating and Routing Certain Vehicles for Hire, and Prohibiting Their Use of Certain Streets Within the City of Hammond", which original Ordinance is now in my possession as such Clerk.

Witness my hand and seal of the City of Hammond this 10 day of June, 1925.

(Signed) ARNOLD H. KUNERT,
City Clerk.

(Seal of City of Hammond.)

(Signed) DANIEL BROWN,
Mayor.

But, plaintiff says, that, said purported Ordinance is illegal and void, in that it is unreasonable and beyond the power and

authority of said City of Hammond to adopt such an Ordinance; that, said ordinance is discriminatory, and unlawfully discriminates against this plaintiff, and attempts to give to other persons and citizens, or classes of citizens, privileges and immunities which, upon the same terms, are not granted to this plaintiff and to other citizens in like circumstances to the plaintiff; that, said ordinance attempts to control, and prohibit the usual and customary use of the streets of the City of Hammond by plaintiff, coming into the City of Hammond from outside the City of Hammond, to carry on its regular business and common business, as aforesaid, notwithstanding that said City of Hammond is wholly without power and authority to pass any such ordinance, or make any such conditions relating to the use of the public highways and streets of the City of Hammond by persons so coming into the City of Hammond from outside the City of Hammond; that, said ordinance is invalid and unreasonable, in that, it gives to the Board of Public Works of said City of Hammond an arbitrary power to discriminate against this plaintiff, by giving permission to some persons, and withholding the right from this plaintiff ,and others under similar conditions, to use the streets of the City of Hammond; that, said ordinance, by its very terms, discriminates in favor of those having alleged contracts with the City of Hammond; that, the sole and only purpose of said ordinance is to discriminate against this plaintiff, and in favor of said Calumet Motor Coach Company mentioned in plaintiff's complaint herein; that, said ordinance is unreasonable, unfair, and illegal, and is an undue restraint upon lawful trade and business; that, said ordinance provides no uniform conditions or rules by which the Board of Public Works should be guided in determining whether it will permit plaintiff and others to use the streets, and thereby gives to said Board of Public Works an arbitrary and
18 unwarranted power.

Plaintiff further says, that, said purported ordinance is also unreasonable, illegal, and void in this: that it purports to regulate and prohibit interstate commerce, and to prevent plaintiff from carrying on its business in the carrying of passengers for hire between the States of Indiana and Illinois; that, said ordinance discriminates against this plaintiff in the conduct of its business in carrying on interstate commerce, and is in direct violation of Section 8 of Article I of the United States Constitution, which provides that:—

"The Congress shall have power * * * to regulate

commerce with foreign nations, and among the several states, and with the Indian tribes."

That, notwithstanding the aforesaid provisions of the Federal Constitution, said defendant City is now purporting to act under said void and illegal ordinance, and, by means thereof, seeks, by arresting plaintiff's drivers and employees, to prevent and prohibit it from engaging in and carrying on interstate commerce in the carrying of passengers for hire, as aforesaid; which acts, plaintiff says, are illegal and void; and in direct violation of the law of the land, and deprives plaintiff of its property without due process of law, and abridges the privileges and immunities of plaintiff as guaranteed to it by the 14th Amendment to the United States Constitution, and denies to plaintiff the equal protection of the laws, and discriminates against plaintiff to its detriment and damage; all in violation of the United States Constitution and the Amendments thereof, and also in violation of Section 23 of Article I of the Indiana Constitution, which provides, that:—

"The General Assembly shall not grant to any citizen, or class of citizens, prvileges or immunities which, upon the same terms, shall not equally belong to all citizens."

That, plaintiff, in all respects, has complied with all reasonable and lawful requirements of the State of Indiana, and is authorized, as aforesaid, by Certificates of "Public Convenience and Necessity" to carry on said business in, and within, and through, and throughout the State of Indiana, all as aforesaid; yet, plaintiff says, that, said defendant City, purporting to act under said void ordinance, unless restrained and enjoined from so doing, will, by reason of its interference and arrests, and conduct, all as hereinabove described, prevent and prohibit plaintiff from carrying on its proper and lawful business, all to its great and irreparable damage.

19 And, plaintiff further says, that, purporting to act under said illegal and void ordinance, as aforesaid, said defendant City of Hammond, through its police officers, Mayor, and Chief of Police, has arrested plaintiff's employees, charging them with no other offense than simply stopping plaintiff's motor busses to pick up and let off passengers within the City of Hammond; and, said defendant is now threatening to, and will continue to, arrest plaintiff's employees unless they are restrained and enjoined from so doing.

That, said purported ordinance was passed by the City

Council of the City of Hammond at the request of said Calumet Motor Coach Company for the express purpose of discriminating against plaintiff, and for no other purpose; that, purporting to act under said ordinance, said defendant City of Hammond is now prohibiting and preventing this plaintiff from carrying on its business of interstate commerce in the carrying of passengers for hire, all as alleged in its complaint herein; that, unless said defendant is enjoined and restrained from so doing, it will entirely destroy the business of this plaintiff, notwithstanding that it now permits said Calumet Motor Coach Company, without hindrance or prohibition, to use each and all of the streets mentioned in said ordinance in carrying on its business, in carrying passengers for hire, and in carrying passengers to and from the City of Chicago to the City of Hammond, over the exact same route which plaintiff was using, and desires to use; and said defendant City, through its police officers, permits said Calumet Motor Coach Company to stop on each and all of said streets, claiming that said Calumet Motor Coach Company has a right to stop its busses, and to operate its busses, by reason of said purported ordinance, but that this plaintiff has no such right, notwithstanding that it is engaged in interstate commerce, all as alleged in its complaint herein; that, by such means, as aforesaid, said defendant City unlawfully discriminates against this plaintiff and denies to this plaintiff the equal protection of the laws of said State of Indiana, and of the United States of America; and, by such acts, as aforesaid, said defendant City grants and gives to other persons and citizens privileges and immunities which, upon the self same terms, it denies to this plaintiff,—all in violation of the Constitution of the State of Indiana and the Constitution of the United States of America, and its amendments; that, such acts of said defendant City are wholly illegal, arbitrary, and void; but, plaintiff says, that, it has no other means of redress in the premises except to bring this suit for an injunction against said defendant, enjoining said defendant, its agents, and officers, from continuing such unlawful and illegal acts against plaintiff and its employees.

20 Plaintiff further says, that, by reason of the unlawful and arbitrary acts of said defendant, as hereinabove alleged, in a further endeavor to operate and maintain its business in the carrying of passengers, in the conduct of interstate commerce, as aforesaid, and as outlined in its complaint herein, this plaintiff obtained the permission, license,

and right from the owner, to use a private strip of land in the City of Hammond owned by the Hammond Hotel & Improvement Company, located near the intersection of Plummer Avenue and Hohman Streets, giving intercommunication to each of said streets, but which land is owned in fee simple by said Hammond Hotel & Improvement Company, and which latter company gave its permission to this plaintiff to use said land as a place for the loading and unloading of passengers in said City of Hammond, wholly upon said land, and not within, or upon, any of the streets, alleys, or public places, of said City of Hammond; but plaintiff says, that: notwithstanding, said defendant City of Hammond has forbidden, and now continues, through its Mayor, Chief of Police, and police officers, to forbid this plaintiff to use said land, and threatened, and is now threatening, to arrest plaintiff's employees even if this plaintiff attempts to load and unload passengers upon said tract of land in which said defendant City of Hammond has no right, title, or interest whatsoever; and which land is owned in fee simple by said Hammond Hotel & Improvement Company, as aforesaid, and which company has given, and granted, permission to this plaintiff to so use said land; that, by each and all of the aforesaid acts, said defendant City of Hammond has entirely prevented and prohibited, and now threatens to entirely prevent and prohibit, this plaintiff from carrying on its business of interstate commerce in the carrying of passengers for hire between the City of Hammond and the City of Chicago and Calumet City, and East Chicago, all as aforesaid, and will continue so to prohibit and prevent this plaintiff from carrying on its said business, unless it is restrained and enjoined from so doing, and will, in such manner, completely destroy plaintiff's business, all to its irreparable damage and injury.

And, plaintiff says, that, the acts of said defendant City are wholly unlawful and void, and in direct violation of both the Federal Constitution and its Amendments, and the Indiana State Constitution,—all as hereinabove alleged.

And, plaintiff further says, that, said purported ordinance, under which said defendant City, its Mayor, Chief of Police, and officers, purport to act, is wholly unreasonable, illegal and void, and has been so held to be void by the City Court of the City of Hammond, which Court had full jurisdic-
21 tion to hear and determine said question, in this, to wit:

That, in accordance with the conduct of said defendant, as hereinabove alleged, on the 17th day of June, 1925, said

defendant City of Hammond, by its Chief of Police and police officers, upon the orders of the Mayor of said City, then and there arrested one Clarence E. Dome, an employee and driver of one of plaintiff's said auto busses, used in the carrying of passengers, in the conduct of interstate commerce, as aforesaid, carrying passengers for hire from and between the cities of Hammond, Indiana, and Chicago, Illinois, as aforesaid; and, in the City Court of the City of Hammond, a Court having exclusive jurisdiction to hear and try cases arising under alleged violation of the ordinances of said City of Hammond, brought and prosecuted a charge against said Clarence E. Dome, this plaintiff's employee and driver as aforesaid, upon the ground, and upon the express charge, that:

"He, the said Clarence E. Dome, did, on the 17th day of June, 1925, at and within the corporate limits of the City of Hammond, County of Lake, and State of Indiana, the said defendant being then and there engaged in the driving and operation, and had the sole control and management of a certain motor bus, and that said motor bus was then and there engaged in the transportation of passengers for hire; that, said motor vehicle was not being operated under any contract to which the City is a party, nor was said vehicle being operated as a taxicab; and, that Hohman Street is one of the principal business thoroughfares, extending in a northerly and southerly direction through the main business portion of Hammond; that, on the day and date aforesaid, defendant, while driving and operating the said motor bus, as aforesaid, did then and there unlawfully drive, propel, and run, and cause to be driven, propelled, and run, said motor vehicle over, upon, and across the said Hohman Street, and over, upon, and across that part thereof extending between Russell Street on the south and Michigan Avenue on the north, contrary to, and in violation of, Sections 1, 2, and 3 of Ordinance No. 1945 adopted by the Common Council of the City of Hammond on the 23rd day of May, 1925."

22 That, in said suit, so brought by said defendant City of Hammond in said City Court of Hammond against said Clarence E. Dome, one of the employees and drivers of this plaintiff, as aforesaid, the said defendant City of Hammond was then and there a party to said action, and the employee and driver of this plaintiff was then and there a party defendant to said action, being one of the many employees which said defendant has repeatedly arrested, and now continues to

threaten to arrest, and will continue to arrest and prosecute unless enjoined and restrained from so doing; that, said suit in said City Court was brought directly, and expressly, by said defendant City under, and upon, the express charge of the alleged violation of Sections 1, 2, and 3 of said alleged ordinance hereinabove set out, to-wit: said alleged ordinance No. 1945 adopted by the Common Council of said City of Hammond on the 23rd day of May, 1925, as aforesaid.

And, plaintiff further says, that, such steps were taken in said cause in said City Court of the City of Hammond, as aforesaid; that the validity of said alleged ordinance was put directly at issue on said alleged charge; that, upon the hearing and trial of said cause in said City Court of Hammond upon demurrer, and upon the merits of said cause, said City Court of Hammond duly held, and adjudged, that said purported Ordinance No. 1945, hereinabove set out, and under which said prosecution was brought, as aforesaid, by said defendant against said Clarence E. Dome, an employee and driver of this plaintiff, as aforesaid, was unreasonable, illegal, and void, as being in violation of the law of the land, and the Constitution of the State of Indiana; and, that, said purported ordinance was wholly void and of no effect whatsoever; that, said judgment of said City Court of the City of Hammond was duly given in said cause, and said City Court had full jurisdiction of both the subject matter and of the parties; that, the validity of said purported ordinance was directly put in issue therein, and was decided by said City Court of Hammond, as aforesaid; that, said judgment of said City Court of Hammond is and at all times since its rendition on the 27th day of June, A. D. 1925, as aforesaid, by said Court, has been, and still remains, in full force, and effect, and unappealed from; that by reason of each and all of the aforesaid facts, plaintiff says that said purported ordinance is, by the judicial construction of the City Court of the City of Hammond, the Court which has exclusive jurisdiction to hear and determine alleged violations of said ordinances, void, illegal, unreasonable, and of no effect whatsoever; and, that, said defendant City is thereby estopped and should be held to be thereby estopped, from further contending that it has a right to further attempt to prevent and prohibit this plaintiff from carrying on its lawful business in the conduct of interstate commerce, and the carrying of
23 passengers for hire, as aforesaid, under any of the provisions of said purported ordinance whatsoever; yet, not-

withstanding each and all of the aforesaid facts, plaintiff says, that, on the 8th day of July, 1925, said defendant City of Hammond did, through its Mayor, Chief of Police, and police officers, again arrest one Lansdowne, an employee and driver of one of the auto busses of this plaintiff for an alleged violation of the self same ordinance, and for the alleged offense of loading and unloading passengers within said City of Hammond, notwithstanding that he, the said Lansdowne, was then and there engaged, as an employee of this plaintiff, in the conduct of interstate commerce within the State of Indiana and the State of Illinois, in the carrying of passengers for hire from the said City of Hammond, in the State of Indiana, to the City of Chicago, in the State of Illinois, and not otherwise; and, that at the time of the arrest of the said Lansdowne, he, as such driver and employee of this plaintiff, was then and there upon said private strip of land, above described, and not upon any public street in said City of Hammond, or any public place of any kind or character whatsoever, but was then and there in charge of plaintiff's bus upon said private strip of ground, loading passengers preparatory to starting on a trip to Chicago, Illinois, in the carrying of said passengers, for hire, as aforesaid.

And, plaintiff further says, that, by such means said defendant prohibits and prevents plaintiff from carrying on its business in the carrying of passengers, for hire, as aforesaid; and each and every time plaintiff attempts to operate its said busses, and to carry on its business, said defendant arrests each and every driver, purporting to act under said ordinance aforesaid.

That, on the 22nd day of July, 1925, said defendant City, through its police officers, made a total of twenty-two (22) arrests of plaintiff's employees, purporting to arrest them under the said void ordinance as aforesaid, and charging them in each of said instances with the alleged offense of violating the city traffic law, to-wit: said alleged ordinance and the provisions thereof, in that, said employees were at the time of the alleged arrest driving, as such employees, an auto bus of plaintiff over Hohman Street, enroute to Chicago, Illinois, in the conduct of plaintiff's business, as aforesaid; that, said defendant claims and purports to claim that under said alleged ordinance plaintiff cannot drive its said busses over the streets of the City of Hammond, in carrying passengers over its several routes, as hereinabove described, notwithstanding each and all of the aforesaid facts, unless permis-

sion be given to plaintiff by the Board of Public Works of said City; and, said Board of Public Works of said City
24 has refused, and still refuses to give its permission to plaintiff to drive its said auto busses over said Hohman Street, and other streets of said City, as hereinabove alleged, notwithstanding that plaintiff has obtained the permit so to do from the Public Service Commission of Indiana, all as hereinabove alleged.

That on the 23rd day of July, 1925, after the great number of arrests of plaintiff's employees, as aforesaid, had been made, said City brought said cases to trial for the alleged violation of said purported ordinance, as aforesaid, in the City Court of Hammond, and said City Court on the hearing thereof, and after full hearing thereof, again adjudged, that, said ordinance was void, unreasonable, and of no effect whatsoever.

But plaintiff says, that, said defendant City of Hammond notwithstanding the many cases thus brought and decided in the City Court of Hammond, so holding said ordinance void, as aforesaid, and in which the validity of said ordinance was directly put in issue, refuses to refrain from arresting plaintiff's employees, and by such means entirely prevents plaintiff from carrying on its business in the carrying of passengers, for hire, as hereinabove alleged.

And, plaintiff further says, that, said Hohman Street is not unduly congested, and is the only direct route leading from plaintiff's private terminal aforesaid; that, plaintiff's auto busses do not cause, or impose, undue strain, or any unusual load, or burden, upon said Hohman Street, different from that continually traveling thereon by other auto busses and motor vehicles.

That, by the Certificates of "Convenience and Necessity" granted and issued to plaintiff by the Public Service Commission of Indiana, plaintiff has been granted express leave, and authority, and the right to operate its auto busses on, and upon said Hohman Street, as well as other streets in the City of Hammond, in the conduct of its business, as aforesaid. Yet, notwithstanding each and all of the aforesaid facts, said defendant City now threatens to continue to arrest, and will continue to arrest, each and all of the employees and drivers of this plaintiff, to the complete prevention and prohibition of this plaintiff from carrying on its business of interstate commerce, as aforesaid, and will prevent it entirely from carrying passengers for hire between said cities of Hammond

and Chicago, and Calumet City, and East Chicago, unless said defendant, its officers, agents, and employees, are restrained and enjoined from so doing; that, plaintiff has no other adequate remedy, either at law, or in equity, and unless defendant, its officers, agents, and employees, are enjoined and restrained from interfering with plaintiff in the conduct of its business, and from arresting and prohibiting its employees and drivers from proceeding with the conduct of plaintiff's business, plaintiff's said business will be entirely destroyed, to its great and irreparable damage.

Wherefore, plaintiff prays judgment that said defendant City of Hammond, its Mayor, Chief of Police, officers, agents, and servants, may be perpetually enjoined from in any wise interfering with, or preventing, or prohibiting, plaintiff from carrying on its said business, and from arresting, imprisoning, fining, and prosecuting plaintiff's drivers and employees while engaged in plaintiff's said business; and, that, a temporary injunction be issued pendente lite, enjoining said defendant City, its Mayor, Chief of Police, officers, agents, and servants, pending this suit, from in any way interfering with, molesting, or prohibiting plaintiff from carrying on its said business, and from arresting, imprisoning, fining, and prosecuting plaintiff, and plaintiff's employees and drivers, pending this suit; and, that, said alleged ordinance, under which said City purports to act, may be declared unreasonable, null, and void, and that plaintiff be protected from further interference by said defendant City, its Mayor, Chief of Police, officers, agents, and servants, in the conduct of its business, and in the carrying of passengers for hire, and in the carrying on of interstate commerce, all as alleged in plaintiff's complaint herein, and for all other proper and further relief to which plaintiff may be entitled in law and in equity.

W. J. Whinery,
Earl Barnes &
Fred Bates Johnson,
Attorneys for Plaintiff.

State of Indiana }
County of Lake } ss.

HENRY SCHAPPI and HENRY SCHAPPI, Jr., each being first duly sworn, upon oath say: that they are respectively the President and Secretary of the plaintiff, Schappi Bus Line, Incorporated, a corporation; that, they have read the foregoing complaint; that the facts set forth therein are

true, in substance, and in fact; and that the beliefs expressed therein are the true beliefs of each of them; that they make this separate and several affidavit for, and on behalf of, said plaintiff; and further affiants say not.

HENRY SCHAPPI,
HENRY SCHAPPI, JR.

Subscribed and sworn to before me this 28th day of July, A. D. 1925.

W. J. WHINERY,
Notary Public.

(Notarial Seal)

My notary commission expires: November 20, 1927.

27 (Endorsements on back of Complaint for Injunction:

* * * * * *

Original

Complaint for Injunction.

(Stamped:
Filed
Jul. 28, 1925
William P. Kappes, Clerk.

Clerk will please issue summons on within complaint for Defendant, returnable as required by law and the Rules of Court. W. J. Whinery, Atty. for Plaintiff.

28 And afterwards, to-wit: On the 6th day of August, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, the following further proceedings were had and entered of record in this cause, to-wit:

* * * * * *

Comes now the plaintiff, Schappi Bus Line, Incorporated, a corporation, and files herein its motion for a preliminary injunction, which motion is in words and figures following, to-wit:

Aug. 6. 29 MOTION FOR A PRELIMINARY INJUNCTION, ETC.

* * * * * *

Now comes the plaintiff in the above entitled cause, the said Schappi Bus Line, Incorporated, by William J. Whinery and Earl Barnes, its solicitors, and move the Honorable Samuel Alschuler, in Chambers, at Hammond, Indiana, presiding as Judge of said Court in said cause, to grant a preliminary writ of injunction herein against said defendant, its agents, attorneys, servants and employees, pending this suit, and until the further order of this Court, conformable to the prayer of the bill of complaint filed in this cause.

(Signed) W. J. WHINERY & EARL BARNES,
Attorneys for Plaintiff.

30 (Endorsements on back of Motion for a Preliminary Injunction, etc.:

* * * * * *

Motion for a Preliminary Injunction, Etc.

Stamped:
Filed
Aug. 6, 1925
William P. Kappes, Clerk.

Wm. J. Whinery
Attorney and Counselor
Hammond, Ind.

Long Distance Tel. 269.

31 And afterwards, to-wit: On the 17th day of August, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, the following further proceedings were had and entered of record in said cause, to-wit: Filed A 1925.

* * * * * *

Comes now the defendant, City of Hammond, a municipal corporation, and appears to plaintiff's complaint herein, and files answer to plaintiff's complaint herein, which answer is in words and figures following to wit:

32 PLAINTIFF'S EXHIBIT 2.

ANSWER.

* * * * * *

The defendant City of Hammond for answer to the Bill of Complaint herein, admits that the plaintiff is a corporation organized under the laws of the State of Illinois; that the defendant is a municipal corporation of the State of Indiana. Defendant admits that at the time of the filing of said Bill of Complaint, plaintiff was engaged in the business of carrying passengers as a common carrier between the City of Chicago in the State of Illinois, and the City of Hammond, Indiana; that as to whether plaintiff was engaged in local business in the State of Indiana, defendant is without knowledge. Defendant admits that plaintiff carried said passengers between Chicago, Illinois, and Hammond, Indiana, from a point in the public streets of the City of Chicago, Illinois, at or near South Park Avenue and 63rd Street, and that it hauled said passengers substantially along the route outlined and received and discharged them in the City of Hammond, Indiana, on Hohman Street, as alleged in said Bill of Complaint. Defendant is without knowledge as to whether any of the streets or highways in which said operation was carried on were constructed by Federal Aid. Defendant is without knowledge as to whether the route, so described, is the most direct, popular and serviceable one between said cities. Defendant is without knowledge as to the time schedules of the plaintiff's service as alleged in the Bill of Complaint, and without knowledge as to the rates of

fare. Defendant admits that the busses, so-called, used by the plaintiff are of a modern type. Defendant is without knowledge as to the number of people carried in said service by the plaintiff, and is without knowledge as to whether plaintiff has procured all necessary licenses, and complied with all laws or regulations as to the use of the streets and highways in the State of Indiana or elsewhere. Defend-
33 ant is without knowledge as to the date upon which plaintiff established its said service. Defendant is without knowledge as to the service alleged to be carried on between Calumet City, Illinois, and East Chicago, Indiana, by the plaintiff, or the number of people carried therein. Defendant is without knowledge as to the competency, efficiency and qualification of plaintiff's drivers or chauffeurs.

Defendant admits the allegations in the Bill as to the population of the various cities mentioned therein, and the existence of a large amount of interstate traffic among them. Defendant denies the need or necessity of the operation of the plaintiff between or among said cities, and is without knowledge as to whether said operation is profitable or the demand increasing. Defendant admits the existence and operation of the Hammond, Whiting & East Chicago Street Railway, as alleged in the Bill, except as to the adequacy of its service and efficiency of its equipment and its time schedules. Defendant admits the existence and operation of Calumet Motor Coach Company and its service in said City of Hammond. Defendants admits that plaintiff has been receiving and discharging passengers on Hohman Street in said City, as alleged in the Bill. Defendant denies that plaintiff has stopped not to exceed five minutes for receiving such passengers, but says that on the contrary, such stops have been as long as ten or fifteen minutes in said City, and denies that said busses have stopped only temporarily and momentarily.

Defendant admits that through its Police Department it has undertaken to prevent and prohibit plaintiff from loading and unloading passengers in said Hohman Street, and that it will continue so to do, unless prevented by lawful authority.

Defendant denies that its primarily purpose is to hinder and prevent plaintiff from carrying on interstate commerce and carrying passengers for hire, and asserts that on the contrary, its action is a reasonable regulation conducive to public safety and order, and denies that its interference has

caused great damage and loss to the plaintiff, and denies that its action will destroy plaintiff's business, and denies that its conduct is in any sense a violation of rights guaranteed under the Constitution or laws of the United States, and denies that the highways mentioned in said Bill are not unduly congested, but on the contrary, asserts that there is great and confusing congestion at and about said corner of State and Hohman Streets in said City, and the places where plaintiff has received and discharged passengers heretofore in said Hohman Street; that whatever may be the entry on the police records of said City concerning the offenses charged against plaintiff and its employes, they are and will be prosecuted under said Ordinance No. 1945.

34 Defendant denies that its conduct destroys interstate commerce, but on the contrary says that there are other usable and convenient avenues open to the passage of plaintiff's motor vehicles in said through said defendant City.

Defendant is without knowledge as to the insurance carried by the plaintiff, as alleged in the Bill.

Defendant further says that it has appealed to the Lake Superior Court from the orders of the Public Service Commission mentioned in said Bill of Complaint, granting to the plaintiff herein the certificates of convenience and necessity mentioned in said Bill of Complaint; that said certificates and the permits issued or implied thereby are of no valadity, force or effect whatsoever without permission from the City of Hammond; that said permits are of no virtue for the further reason that they are an attempt to regulate interstate commerce.

Defendant further admits the passage of Ordinance #1945 mentioned in said Bill of Complaint and says that it is attempting to enforce the same according to its letter and spirit.

Defendant denies that it is arresting or attempting to arrest plaintiff's drivers for being on the strip of land alleged to be a private terminal near the intersection of Plummer Avenue and Hohman Street in said City and does not threaten to arrest, and will not arrest, such employes nor interfere with the plaintiff in any sense in unloading or loading passengers on such ground unless and until the question of whether or not it is a public street has been determined.

Defendant denies that the hearing of one Clarence E. Dome in the City Court of Hammond was upon the merits of the

cause and says that it was only upon the demurrer to the complaint.

Defendant denies that one Lansdowne mentioned in the Bill of Complaint was arrested for being on said so-called private terminal.

Defendant denies the allegation in said Bill of Complaint that Hohman Street, where the plaintiff is forbidden to be, is not unduly congested and that plaintiff's auto busses do not cause or impose undue strain or unusual load or burden on said street.

Defendant further alleges as a second distinct and separate defense to said Bill that said Bill is insufficient for want of equity.

35 Defendant further alleges that as a third distinct and separate defense to said Bill that the same is not sufficient in law.

Wherefore, defendant prays that said Bill be dismissed with costs.

(Signed) McMahon & Conroy,
Solicitors for Defendant.

36 (Endorsements on back of Answer:

Answer.

(Stamped:
Filed
Aug. 17, 1925
William P. Kappes, Clerk

Bomberger, Peters & Morthland
200 Ruff Building, Hammond, Ind.
Attorneys for Defendant.

37 And afterwards, to-wit: On the 14th day of September, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, in Chambers, at South Bend, Indiana, in said District, the following further proceedings were had and entered of record in the above entitled cause, to-wit:

* * * * * *

Comes now the parties, plaintiff and defendant, by their respective attorneys, and the plaintiff shows to the said Judge of said Court, in Chambers, that it has given written notice of the filing of its motion for a preliminary injunction in this cause, and the defendant appears to said notice and motion, and said cause is thereupon submitted to the Judge of said Court, in Chambers in said District, upon the plaintiff's said motion for a preliminary injunction, and the plaintiff offered evidence in support of its said motion, and rested.

38 And thereupon the defendant likewise introduced evidence in opposition to said motion, and rested.

And thereupon the plaintiff offered additional evidence in rebuttal, and in support of said motion, and rested.

And this was all the evidence introduced by the parties upon said hearing, and the hour of adjournment having arrived, the hearing of said cause on said motion for a preliminary injunction, before the said Judge of said Court, was continued until the following day, namely: September 15, A. D. 1925 at ten (10:00) o'clock a. m.

42 And afterwards, to-wit: On the 15 day of October, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, the following further proceedings were had and entered of record in said cause, to-wit:

* * * * * *

Comes now the plaintiff in the above entitled cause and files in the office of the Clerk of said United States District Court, for the District of Indiana, its Bill of Exceptions containing the evidence given on the hearing upon plaintiff's motion for a preliminary injunction in said cause, after the said Bill of Exceptions had been duly approved and signed by the Honorable Thomas W. Slick, one of the Judges of said Court, presiding in said cause, and which said Bill of Exceptions is in words and figures following, to-wit:

of excep-
ns, filed
t. 15, 1925.

43 BILL OF EXCEPTIONS.

* * * * * *

Be It Remembered, That, on the hearing of said cause on the motion of plaintiff for a preliminary injunction in said cause, before the Honorable Thomas W. Slick, one of the Judges of said Court, in Chambers, presiding in said cause, on the 14th day of September, A. D. 1925, in Chambers as aforesaid, the following proceedings were had, and the following evidence was introduced and heard by said Judge of said Court in Chambers on said hearing, to-wit:

The Plaintiff, to sustain the issues and support said motion upon its part, offered and introduced in evidence in its case in chief, the following evidence, to-wit:

44 (1) The verified complaint, filed in this cause in this Court by the plaintiff on the 28th day of July, 1925, in the Clerk's office of said court at Hammond, Indiana, which said verified complaint was marked as "Plaintiff's Exhibit 1," was introduced and read in evidence, being the same identical complaint and document as plaintiff's verified complaint set forth in the transcript of the record in this cause as prepared by the Clerk of said Court, as having been filed in the Clerk's office of this Court at Hammond, Indiana, on the 28th day of July, 1925, as aforesaid, and which said verified complaint, so marked as "Plaintiff's Exhibit 1" as aforesaid, is hereby made a part of this Bill of Exceptions by reference to avoid repetition, the same as if fully incorporated and copied in this Bill of Exceptions. This reference is inserted with the intention of incorporating said verfied complaint, marked "Plaintiff's Exhibit 1," in this Bill of Exceptions by reference as provided in Rule 10, Clause 3, of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit; but which said verified complaint shall be considered as evidence introduced by the plaintiff in this cause the same as though copied in full in this Bill of Exceptions.

(2) Defendant's answer, filed in this cause in this Court by the defendant on the 17th day of August, 1925, in the Clerk's office of said Court at Hammond, Indiana, which said answer was marked as "Plaintiff's Exhibit 2," was introduced and read in evidence, being the same identical an-

45 swer as defendant's answer set forth in the transcript of the record in this cause as prepared by the Clerk of

said Court, as having been filed in the Clerk's office of this Court at Hammond, Indiana, on the 17th day of August, 1925 as aforesaid, and which said answer, so marked as "Plaintiff's Exhibit 2" as aforesaid, is hereby made a part of this Bill of Exceptions by reference to avoid repetition, the same as if fully incorporated and copied in this Bill of Exceptions. This reference is inserted with the intention of incorporating said answer, marked "Plaintiff's Exhibit 2" in the Bill of Exceptions by reference, as provided in Rule 10, Clause 3, of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit; but which said answer shall be considered as evidence introduced by the plaintiff in this cause, the same as though copied in full in this Bill of Exceptions.

(3) "Plaintiff's Exhibit 3," being a Certificate of Public Convenience and Necessity Number 324-M, issued to plaintiff by the Public Service Commission of Indiana on the 26th day of June, 1925, to which offered evidence the defendant objected on the ground that the City of Hammond is a city operating under a franchise, or the color of a franchise, within the proviso of Section 5 of the Motor Vehicle Act of 1925, Chapter 46, Acts of 1925, but which objection was, by the Judge of said Court, overruled, and defendant excepted, and said offered evidence was admitted and read in evidence, and is in words and figures following, to-wit:

46 "PLAINTIFF'S EXHIBIT 3."

BEFORE THE PUBLIC SERVICE COMMISSION OF INDIANA.

In the Matter of the Application of Schappi Bus Line, Inc. for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles as a Common Carrier.	No. 324 M.

Artman, Commissioner:

On May 25, 1925 Schappi Bus Line, Incorporated, of Calumet City, Illinois, filed with the Public Service Commission of Indiana in the above entitled cause, a verified ninety day application for a certificate of public convenience and necessity for the operation by the applicant of motor vehicles as a common carrier of passengers only upon certain public high-

ways of the state. It is alleged in said application that the applicant had operated motor vehicles as a common carrier of passengers upon certain public highways of the state over the route therein described with a substantially regular schedule for a period of ninety days immediately prior to the taking effect of Chapter 46 of the Acts of the General Assembly of the State of Indiana for 1925, and that the applicant was engaged in such operation at the time of filing such application. The applicants submitted verified written proof of the allegations of such petition. The Public Service Commission having examined and considered the evidence submitted, and being thereby duly advised in the premises, finds that the material averments of the application are true. The Commission further finds that the applicant for the period of time hereinbefore designated has been the owner and operator of a motor vehicle common carrier service for the transportation of passengers from Calumet City, Illinois to Hammond, Indiana. That in the operation of said service the applicant has been, and is, engaged in both inter-state and intra-state carriage of passengers as a common carrier. That in the transportation of intra-state passengers the applicant will operate over the public highways from Hammond to the state line, passing through and serving intermediate territory. The Commission finds that the prayer of the petition should be granted, and that a certificate of public convenience and necessity should be issued to the applicant, authorizing it to continue the transportation of intra-state passengers as a common carrier over the aforesaid route upon the public
47 highways of the state from Hammond, Indiana to the Indiana-Illinois state line, upon the filing with the Commission by the applicant of a policy of insurance executed by a company legally authorized to execute such instruments in the state of Indiana, guaranteeing the payment of all damages which may result on account of personal injuries or property damage other than to property designated as cargo from any and all accidents due to negligence in the use or operation of any motor vehicle under such certificate, and the indemnities therein to be equal to the following schedule, to-wit:

On each motor vehicle used for the transportation of passengers the insurer shall be liable to each person suffering damages on account of personal injuries or property damage other than to property designated as cargo as the result of any accident due to the negligence of the insured, his agents,

employes, or representatives, in the use or operation of such motor vehicle to the extent of the damages sustained thereby, not exceeding $5000, and subject to the same limit the total liability of the insurer therefor on account of any one accident shall not exceed $50,000.

On the 25th day of May, 1925, said applicant filed with the Public Service Commission of Indiana its Policy of Insurance No. 738660, executed by the Hartford Accident and Indemnity Company of Hartford, Conn., containing insurance indemnities equal to those set out in the foregoing schedule. Said policy of insurance was on said date approved by the Public Service Commission of Indiana.

It Is Therefore Ordered by the Public Service Commission of Indiana, that a certificate of public convenience and necessity be issued to the applicant Schappi Bus Line, Inc., authorizing it to continue to transport passengers only as a common carrier upon the public highways of the state over the following route:

From Hammon, Indiana to the Indiana-Illinois state line, and to use in such service the motor vehicles described in the application and such other motor vehicles as may be lawfully operated thereunder as additional, replacement, or emergency equipment under any order or rule of the Public Service Commission of Indiana. The application herein, all exhibits and affidavits attached thereto are hereby made a part of this order.

All of which is hereby finally ordered by the Public Service Commission of Indiana this 26th day of June, 1925.

48 PUBLIC SERVICE COMMISSION OF INDIANA
(Signed) J. W. McCARDLE,
Chairman.

Attest:
HOWELL ELLIS,
Secretary.
(Seal)

49 Certificate of Public Convenience and Necessity
Motor Vehicle Form
No. 9.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA

In the Matter of the application of Schappi Bus Line, Inc.,——— for a certificate of public convenience and necessity to operate motor vehicles as a common carrier.	Application No. 324 M. Certificate No. 324 M.

Certificate of Public Convenience and Necessity.

The Public Service Commission of Indiana hereby certifies that, after an investigation and hearing upon the above entitled application, an order was made and entered by it, which is made a part hereof, whereby it found and ordered that said application be granted and that a certificate of public convenience and necessity be issued to said applicant, and this certificate is now issued to Schappi Bus Line, Inc.,——— certifying that public convenience and necessity require the operation of the motor vehicles described in said order upon the route, time schedule and rates set forth in the aforesaid application and order as provided in Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925. This certificate shall cover any and all other motor vehicles which the holder may be authorized to operate under any order or rule of the Public Service Commission of Indiana, either as additional, special, substitute, replacement or emergency equipment.

In testimony whereof the Public Service Commission of Indiana has caused this certificate to be signed by its Chairman and attested by its Secretary, this 26th day of June, 1925.

PUBLIC SERVICE COMMISSION OF INDIANA
(Signed) J. W. MCCARDLE,
Chairman.

Attest:
HOWELL ELLIS,
Secretary.
(Seal)

50 (4). "Plaintiff's Exhibit 4", being a Certificate of Public Convenience and Necessity Number 325-M, issued to plaintiff by the Public Service Commission of Indiana on the 24th day of July, 1925, to which offered evidence the defendant objected on the ground that the City of Hammond is a city operating under a franchise, or the color of a franchise, within the proviso of Section 5 of the Motor Vehicle Act of 1925, Chapter 46, Acts of 1925, but which objection was, by the Judge of said Court, overruled, and defendant excepted, and said offered evidence was admitted and read in evidence, and is in words an figures following, to-wit:—

51 "PLAINTIFF'S EXHIBIT 4."

STATE OF INDIANA

THE PUBLIC SERVICE COMMISSION

Beginning Passenger

In the Matter of the Application of Schappi Bus Line, Incorporated, of Calumet City, Illinois, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles as a Common Carrier from Hammond, Indiana, to Indiana State Line and Continue to Sixty-third Street and Park Avenue, Chicago, Illinois.	No. 325-M

Appearances:

For applicant—Fred B. Johnson.

For protestants—W. W. McMahon, City Attorney, and Bomberger, Peters & Morthland for City of Hammond; Crumpacker & Friedrich, of Hammond, and Harrison & Buskirk, of Indianapolis, for the Chicago, South Shore & South Bend Railway Company and the Hammond, Whiting & East Chicago Railway Company.

Singleton, Commissioner:

On May 25, 1925, applicant filed with the Public Service Commission of Indiana a written, verified application for cer-

tificate of public convenience and necessity to operate as a motor vehicle common carrier, for passenger service only, from Hammond, Indiana, to Chicago, Illinois. Only interstate business was sought. Passengers accepted in Indiana were not to be discharged in Indiana, but taken to Chicago in the State of Illinois. "This is an interstate operation," the application stated.

Policy of insurance No. A. L. P. 738,660, issued by the Hartford Accident & Indemnity Company, of Hartford Con-
52 necticut, was filed with the application.

On June 6, 1925, a hearing was held in the rooms of the Commission at Indianapolis, at which time the City of Hammond presented motion to dismiss for lack of jurisdiction. Applicant's counsel agreed that the motion should be sustained. Some discussion was indulged to clarify the issues, and the applicant gave oral testimony, under oath, to clarify the terms of the application. Applicant stated that he had operated from April 11, 1925, to June 11, 1925, at which time he discontinued the service because an Ordinance was approved by the City of Hammond preventing him from using certain streets in said city. However, applicant wished to continue the prosecution of his case, as evidenced by the presence of himself and witnesses at the hearing and as evidenced by letter from his local counsel in Hammond. Said attorney, W. J. Whinery, urged that certificate should be granted in this case as in cause No. 324-M. This contention lacks similarity in issue as applicant, in 324-M did intra-state business, while the same applicant in the instant case does purely interstate business.

Crumpacker & Friedrich, attorneys, representing the Chicago, South Shore & South Bend and the Hammond, Whiting & East Chicago railway companies, as protestants at the hearing, submitted brief after the hearing in which they urged in behalf of the latter company as follows:

"If, however, the Commission shall conclude that the matter is one wholly of interstate commerce and that the Commission is, therefore, without jurisdiction to deny said company the right to operate, protestant desires to call to the attention of the Commission its duty to take jurisdiction of said cause for the purpose of protecting the citizens of the State of Indiana against damages which may be caused by the said applicant in operating its busses within this state. Even if the operation proposed is one in interstate commerce only, the Commission may and should require the said carrier

to take out and maintain policies of insurance to the same extent as intrastate carriers.

"Congress has not yet enacted any legislation looking to the protection of the general public from injuries caused by motor busses operating in interstate commerce. Until Congress does so, the jurisdiction to protect their citizens remains in the governments of the respective states. It is well settled that until federal legislation is enacted on the subject,
53 interstate carriers are subject to state regulation with respect to the answering of claims for damages caused by them, and with respect to other safety and police measures adopted for the protection of the general public."

This touches the real question in this application.

In the United States Supreme Court, *A. J. Buck* v. *E. V. Kuykendall,* appealed from decree of the Federal Court for the Western District of the State of Washington. The Supreme Court held unconstitutional a state law construed by state authorities to deny the use of highways in Washington state, though preventing interstate operation. Commenting, the court said:

"Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the Commerce Clause."

George W. Bush & Sons Company v. *Wm. M. Maloy, et al.,* appealed to the United States Supreme Court from the application of the motor vehicle law of the State of Maryland by the Public Service Commission of Maryland, in which application for certificate to transact purely interstate business was denied by the Maryland Commission. The Maryland Commission was reversed, and the following comment by the court connected the Buck case and the Bush case:

"The state action in the Buck case was held to be unconstitutional, not because the statute prescribed an arbitrary test for the granting of permits, or because the Director of Public Works had exercised the power conferred arbitrarily or unreasonably, but because the statute as construed and applied invaded a field reserved by the Commerce Clause for Federal regulation Reversed."

It is obvious that the Public Service Commission of Indiana has not jurisdiction to deny the use of Indiana highways to an interstate common carrier.

Chapter 46, Acts of the General Assembly of Indiana, 1925, requires all motor vehicle common carriers that fall within

the jurisdiction of the Public Service Commission of Indiana to file with said Commission "a bond, indemnity undertaking on policy of insurance * * * guaranteeing the payment of all damages which may result from any and all accidents due to negligence in the use or operation of such motor vehicle, which bond, indemnity undertaking or policy
54 * * * shall be in such amount as shall be fixed by such Commission at the time of granting a certificate of convenience and necessity for the operation of such motor vehicle."

Obviously the legislature intended that all persons and all property should receive the protection provided above while within or upon any motor vehicle common carrier authorized by this Commission to operate upon the highways of Indiana. It is fair and reasonable to assume that all citizens of Indiana should have equal protection of all its laws.

Section 5 of Chapter 46, supra, in the proviso of said section, excepts from the jurisdiction of this Commission motor vehicle common carriers that operate in certain cities or towns within the state. The exception is:

"That in any city or town of this state where motor transportation is now furnished under, or by color of, a contract, and in cities and towns contiguous thereto, the board of public works, common council or board of trustees, as the case may be, shall continue to supervise, control, permit, contract for and regulate such service and to determine when, if at all, for public convenience and necessity competing service shall be established; but the determination of the question of public convenience and necessity for competing service, shall be subject to appeal to and review by the circuit or superior courts of the county upon complaint of any interested person filed within twenty days after such finding is made, and in the manner now provided by law for procedure in civil cases, including the right of appeal to the supreme court."

This proviso was intended to retain within the jurisdiction of certain cities the motor vehicle common carrier operation existing at the time of the enactment of Chapter 46, which operation was then under the jurisdiction of said cities "under, or by color of, a contract." The City of Hammond was and is one of such cities. The act (Section 5) designates the jurisdiction of said cities as being "in any city or town of this state * * * and in cities and towns contiguous thereto." It would not be reasonable to assume that the legislature contemplated interstate operation in its expression. For the sake of harmonious operation of the law and

for the sake of granting all the rights that said cities could claim by the terms of ordinances or contracts in existence, "cities and towns contiguous thereto" were embodied in the exception.

Exceptions to a general statute must be construed
55 strictly. It is a fact that in the operation of this applicant's motor vehicle line his operation is strictly interstate; that the only "contiguous" city touched in this operation is the City of Chicago in the state of Illinois. A fair and reasonable construction of the proviso in Section 5 is to ascribe to it the intent that such cities should be limited in their control and that the limitation should be to operation within such cities and within cities and towns contiguous thereto, within the state. Applicant's operation is not within the City of Hammond, within the intent of Section 5, as this Commission believes.

The Commission finds, therefore, that the City of Hammond is without jurisdiction to grant or deny this applicant the right of interstate operation; that the Public Service Commission of Indiana is without authority to deny this applicant the right within this state over interstate operation; that the citizens of Indiana who patronize this applicant are entitled to the equal protection of the provisions in Chapter 46, Acts of 1925, with the citizens of Indiana who patronize intrastate motor vehicle common carriers; that the insurance features of Chapter 46 are aplicable only through, by and at the time of granting a certificate of convenience and necessity by this Commission; that such certificate should issue to the Schappi Bus Line, Incorporated, and it will be so ordered.

It Is, Therefore, Ordered By The Public Service Commission of Indiana, that the Policy of Insurance filed with this application and the schedule, fares, description of motor vehicles and route to the Indiana-Illinois state line be and the same are hereby approved; that a certificate of public convenience and necessity issue to the Schappi Bus Line, Incorporated, to the Indiana-Illinois state line as an interstate common carrier.

Approved by the Public Service Commission of Indiana this 24th day of July, 1925.

(Signed) J. W. McCardle,
Chairman.

(Seal)

Attest:

Howell Ellis,
Secretary.

56 Certificate of Public Convenience and Necessity
Motor Vehicle Form
No. 9.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA.

In the Matter of the application of Schappi Bus Line, Inc., ——— for a certificate of public convenience and necessity to operate motor vehicles as a common carrier.	Application No. 325-M Certificate No. .....

Certificate of Public Convenience and Necessity.

The Public Service Commission of Indiana hereby certifies that, after an investigation and hearing upon the above entitled application, an order was made and entered by it, which is made a part heerof, whereby it found and ordered that said application be granted and that a certificate of public convenience and necessity be issued to said applicant, and this certificate is now issued to Schappi Bus Line, Inc., certifying that public convenience and necessity require the operation of the motor vehicles described in said order upon the route, time schedule and rates set forth in the aforesaid application and order as provided in Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925. This certificate shall cover any and all other motor vehicles which the holder may be authorized to operate under any order or rule of the Public Service Commission of Indiana, either as additional, special, substitute, replacement or emergency equipment.

In testimony whereof the Public Service Commission of Indiana has caused this certificate to be signed by its Chairman and attested by its Secretary, this 24th day of July, 1925.

PUBLIC SERVICE COMMISSION OF INDANA
(Signed) J. W. MCCARDLE,
Chairman.

(Seal)
Attest:
HOWELL ELLIS,
Secretary.

57 (5). "Plaintiff's Exhibit 5", being a certificate of Public Convenience and Necessity Number 326-M, issued

to plaintiff by the Public Service Commission of Indiana on the 5th day of June, 1925, to which offered evidence the defendant objected on the ground that the City of Hammond is a city operating under a franchise, or the color of a franchise, within the proviso of Section 5 of the Motor Vehicle Act of 1925, Chapter 46, Acts of 1925, but which objection was, by the Judge of said Court, overruled, and defendant excepted, and said offered evidence was admitted and read in evidence, and is in words and figures following, to-wit:—

58 "PLAINTIFF'S EXHIBIT 5."

THE PUBLIC SERVICE COMMISSION OF INDIANA

90-Day Operator
Order Granting Certificate of Public Convenience
and Necessity
Motor Vehicle Form No. 8

In the Matter of the Application of Schappi Bus Line, Inc., for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles as a Common Carrier	No. 326-M

Artman, Commissioner:

On May 25, 1925, the Schappi Bus Line, Inc., of Calumet City, Illinois, filed with the Public Service Commission of Indiana, in the above entitled cause, a verified ninety-day application for certificate of public convenience and necessity for the operation by the applicant of motor vehicles as a common carrier of passengers only upon certain public highways of the State of Indiana.

It is alleged in said application that the applicant had operated motor vehicles as a common carrier of passengers upon certain public highways of the state over the route described therein, with a substantially regular schedule, for a period of ninety days immediately prior to the taking effect of Chapter 46 of the Acts of the General Assembly of the State of Indiana for 1925, and that the applicant was engaged in such operation at the time of filing such application.

The applicant submitted verified written proof of the allegations of such petition. The Public Service Commission,

having examined and considered the evidence submitted and being thereby duly advised in the premises, finds that the material averments of the application are true, that the prayer thereof should be granted and a certificate of public convenience and necessity issued to the applicant, and it will be so ordered upon the filing with the Commission by the applicant of a policy of insurance executed by a company legally authorized to execute such instruments in the State of Indiana, guaranteeing the payment of all damages which
59 may result on account of personal injuries or property damage other than to property designated as cargo from any and all accidents due to negligence in the use or operation of any motor vehicle under such certificate and the indemnities therein to be equal to the following schedule, to-wit:—

On each motor vehicle used for the transportation of passengers the insurer shall be liable to each person suffering damages on account of personal injuries or property damages, other than to property designated as cargo, as the result of any accident due to the negligence of the insured, his agents, employes or representatives, in the use or operation of such motor vehicle to the extent of the damages sustained thereby, not exceeding $5000 and, subject to the same limit, the total liability of the insurer therefor on account of any one accident shall not exceed $50,000.

Now, on the 25th day of May, 1925, the applicant filed with the Public Service Commission of Indiana its policy of insurance No. A. L. P. 738660, executed by the Hartford Accident and Indemnity Company of Hartford, Connecticut, containing insurance indemnities equal to those set out in the foregoing schedule, and said policy is now on the 25th day of May, 1925, approved by the Public Service Commission of Indiana.

It Is Therefore Ordered by the Public Service Commission of Indiana, that a certificate of public convenience and necessity be issued to the applicant, Schappi Bus Line, Inc., authorizing it to continue to transport passengers only as a common carrier upon the public highways of the state over the following route, to-wit: From Hammond, Indiana, to East Chicago, Indiana; and to use in such transportation the motor vehicles described in the application and such other motor vehicles as may be lawfully operated thereunder as additional, replacement or emergency equipment under any order or rule of the Public Service Commission of Indiana.

The application herein and all exhibits and affidavits attached thereto are hereby made a part of this order—all of which is hereby finally ordered by the Public Service Commision of Indiana this 5th day of June, 1925.

PUBLIC SERVICE COMMISSION OF INDIANA,
(Signed) J. W. McCARDLE,
Chairman.

(Seal)
Attest:
HOWELL ELLIS,
Secretary.

60 Certificate of Public Convenience and Necessity
Motor Vehicle Form
No. 9.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA

In the Matter of the application of Schappi Bus Line, Inc. ——— for a certificate of public convenience and necessity to operate motor vehicles as a common carrier.	Application No. 326-M Certificate No. .....

Certificate of Public Convenience and Necessity.

The Public Service Commission of Indiana hereby certifies that, after an investigation and hearing upon the above entitled application, an order was made and entered by it, which is made a part hereof, whereby it found and ordered that said application be granted and that a certificate of public convenience and necessity be issued to said applicant, and this certificate is now issued to Schappi Bus Line, Inc., Calumet City, Illinois, certifying that public convenience and necessity require the operation of the motor vehicles described in said order upon the route, time schedule and rates set forth in the aforesaid application and order as provided in Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925. This certificate shall cover any and all other motor vehicles which the holder may be authorized to operate under any order or rule of the Public Service Commission of Indiana, either as additional, special, substitute, replacement or emergency equipment.

In testimony whereof the Public Service Commission of

Indiana has caused this certificate to be signed by its Chairman and attested by its Secretary this 5th day of June, 1925.

PUBLIC SERVICE COMMISSION OF INDIANA,
(Signed) J. W. McCARDLE,
Chairman.

(Seal)

Attest:

HOWELL ELLIS,
Secretary.

61 (6). "Plaintiff's Exhibit 6", being a Certificate of Public Convenience and Necessity Number 327-M, issued to plaintiff by the Public Service Commission of Indiana on the 3rd day of July, 1925, to which offered evidence the defendant objected on the ground that the City of Hammond is a city operating under a franchise, or the color of a franchise, within the proviso of Section 5 of the Motor Vehicle Act of 1925, Chapter 46, Acts of 1925, but which objection was, by the Judge of said Court, overruled, and defendant excepted, and said offered evidence was admitted and read in evidence, and is in words and figures following, to-wit:—

62 "PLAINTIFF'S EXHIBIT 6."

Ninety Day Operator—Motor Vehicle Form No. 8

BEFORE THE PUBLIC SERVICE COMMISSION OF INDIANA.

In the Matter of the Application of Schappi Bus Line, Incorporated, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles as a Common Carrier. } Application No. 327-M

By the Commission:

On May 25, 1925, Schappi Bus Line, Incorporated, of Calumet City, Illinois, filed with the Public Service Commission of Indiana a verified ninety-day application for a certificate of public convenience and necessity for the operation of motor vehicles in the transportation of passengers only on certain highways of the State of Indiana for hire as a common carrier. In said application the points between which applicant is operating and the rates and charges for the service rendered, were set out.

The applicant also filed policies of insurance carrying the prescribed endorsements of this Commission guaranteeing

the payment of all damages which may result from any and all accidents due to negligence in the operation of motor vehicles authorized to be operated by the terms of this order. These policies are as follows:

Hartford Accident & Indemnity Company, Policy No. A. L. P. 738660.

The Commission having examined said application and said policies of insurance finds that each of them meet the requirements of Chapter 46 of the Acts of the General Assembly of the State of Indiana for 1925, and the requirements of the rules and regulations of this Commission authorized by said Act, and that said application and policies of insurance should be approved.

It Is Therefore Ordered by the Public Service Commission of Indiana, that certificate of convenience and necessity be, and it is, issued to the applicant, Schappi Bus Line, In-
63 corporated, for the operation of motor vehicles as a common carrier of passengers on the public highways of the State of Indiana over the following route, to-wit:

From Indiana State Line to East Chicago, Indiana, passing through Hammond over the following route: Leave Garfield Avenue & Harrison St.; East on Garfield to Lincoln; South on Lincoln to 154th Street; East on 154th Street to Forsythe; South on Forsythe to 156th Street; East on 156th Street to Hohman; North on Hohman to State Street; East on State Street to Calumet Avenue; North on Calumet to 150th Street; East on 150th to Forsythe (E. Chicago); North on Forsythe to Chicago Avenue; East on Chicago Avenue to Euclid Avenue; North on Euclid to General American Tank Corporation,

and to use in said service the motor vehicles described in said application and such other motor vehicles as may be lawfully operated thereunder as additional, replacement, or emergency equipment under any order or ruling of the Public Service Commission of Indiana. The application herein and all exhibits and affidavits attached thereto are hereby made a part of this order.

Approved by the Public Service Commission of Indiana this 3rd day of July, 1925.

PUBLIC SERVICE COMMISSION OF INDIANA,
(Signed) J. W. MCCARDLE,
Chairman.

(Seal)

Attest:

HOWELL ELLIS,
Secretary.

64 Certificate of Public Convenience and Necessity
Motor Vehicle Form
No. 9.

THE PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA

In the Matter of the application of Schappi Bus Line, Inc.,——— for a certificate of public convenience and necessity to operate motor vehicles as a common carrier.	Application No. 327-M Certificate No. 327-M

Certificate of Public Convenience and Necessity.

The Public Service Commission of Indiana hereby certifies that, after an investigation and hearing upon the above entitled application, an order was made and entered by it, which is made a part hereof, whereby it found and ordered that said application be granted and that a certificate of public convenience and necessity be issued to said applicant, and this certificate is now issued to Schappi Bus Line, Incorporated, certifying that public convenience and necessity require the operation of the motor vehicles described in said order upon the route, time schedule and rates set forth in the aforesaid application and order as provided in Chapter 46 of the Acts of the General Assembly of the State of Indiana for the year 1925. This certificate shall cover any and all other motor vehicles which the holder may be authorized to operate under any order or rule of the Public Service Commission of Indiana, either as additional, special, substitute, replacement or emergency equipment.

In testimony whereof the Public Service Commission of Indiana has caused this certificate to be signed by its Chairman and attested by its Secretary, this 3rd day of July, 1925.

PUBLIC SERVICE COMMISSION OF INDIANA
(Signed) J. W. MCCARDLE,
Chairman.

(Seal)

Attest:
HOWELL ELLIS,
Secretary.

65 (7). A certified transcript of proceedings and judgment had in Cause No. 10624 in the City Cour of Hammond, Indiana, which was identified and marked as "Plain-

tiff's Exhibit 7", in which case the City of Hammond was plaintiff and one Clarence E. Dome was defendant, and which suit was brought for the alleged violation of Ordinance No. 1945 by said Clarence E. Dome, defendant, an employe of the plaintiff, and which said Ordinance is the same identical ordinance as set forth and copied in plaintiff's verified complaint, and to which offered evidence the defendant objected, and the Judge of said Court sustained said objection, and plaintiff excepted to such ruling; and said offered evidence was not introduced, nor read in evidence.

(8). A certified copy of Ordinance No. 1945 of the City of Hammond, the same being a certified copy of the same ordinance set forth in plaintiff's verified complaint, was marked for identification as "Plantiff's Exhibit 8", and was introduced and read in evidence, and is in words and figures following, to-wit:

66 "PLAINTIFF'S EXHIBIT 8."

#1945.

An Ordinance Regulating and Routing Certain Vehicles for Hire, and Prohibiting Their Use of Certain Streets Within the City of Hammond.

Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that in order to promote public safety and order, and to diminish the congestion of vehicular travel within said City, from and after the taking effect of this Ordinance it shall be unlawful for any person, firm or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon, or over any of the following parts of streets within said City of Hammond, to-wit:

On Hohman Street from Russell Street to Michigan Avenue;

On State Street from Morton Court to Calumet Avenue;

On Sibley Street from the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company where the same crosses Sibley Street westerly to Morton Court.

On Fayette Street from Hohman Street to Oakley Avenue.

Section 2. From and after the taking effect of this Ordinance it shall be unlawful for any person, firm or corporation

owning or operating any motor vehicle carrying passengers for hire, to stop such vehicle for the purpose of receiving or discharging passengers upon any street, alley or other public place within said City; provided, that the Board of Public Works may, for any period not exceeding six (6) months or successions thereof, permit such operation on any or all of the following designated parts of streets: Columbia Avenue, between the South City limits and the right of way of the Michigan Central Railroad where the same crosses said Columbia Avenue; Sibley Street from Columbia Avenue to the easterly line of the right of way of the Chicago, Indianapolis & Louisville Railway Company; State Line Street from its southerly terminus to its northerly terminus at or near the right of way of said Michigan Central Railroad aforesaid; Rimbach Avenue from State Line Street to Ann Street; Ann Street from Rimbach Avenue to Russell Street; Russell Street from Ann Street to State Line Street, and for vehicles engaged strictly in interstate commerce, any street or other public place north of 122nd Street and east of Calumet Avenue.

67

Section 3. Whoever violates any of the provisions of Sections 1 and 2 of this Ordinance, shall, upon conviction, be fined in any sum not exceeding Fifty ($50.00) Dollars for each and every offense, but nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party, under which such motor vehicles are now operated for hire within said City. Nothing herein shall apply to taxi-cabs.

Section 4. This Ordinance shall supplement such ordinances as are now in force, and repeal only so much of them or any part thereof as may be in direct conflict herewith.

Geo. J. Wolf,
President.

Attest:
Arnold H. Kunert,
City Clerk.

Submitted to the Mayor for his approval this 23rd day of May, 1925.

Approved by me this 23rd day of May, 1925.

Daniel Brown,
Mayor.

Filed in my office after approval by the Mayor this 23rd day of May, 1925.

Arnold H. Kunert,
City Clerk.

State of Indiana } ss.
County of Lake }

I, Arnold H. Kunert, City Clerk of the City of Hammond, said county and state, and clerk of the City Court of said City, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 1945 as passed by the Common Council on May 23, 1925, and as contained in the ordinance book.

ARNOLD H. KUNERT,
City Clerk.

(Seal)

By: HARRIET KLEE,
Deputy Clerk.

68 (9). Plaintiff offered in evidence a Warranty Deed from James P. Bereolos, and wife, to the Hammond Hotel & Improvement Company, which Deed was marked for identification as "Plaintiff's Exhibit 9", and to which offered evidence the defendant objected, and stated to the Judge of said Court, that:

"So far as the issues in this case are concerned, the land described in "Plaintiff's Exhibit 9" shall be treated as private property, assuming that the description in said Exhibit 9 is a correct description of the private terminal of plaintiff on land in the City of Hammond."

And upon defendant's counsel having made said statement to the Judge of said Court, the plaintiff withdrew said offered evidence, so marked as "Plaintiff's Exhibit 9" as aforesaid;

And thereupon the plaintiff rested its case in chief.

69 And the defendant, to sustain the issues upon its part, then offered and introduced the following evidence, to-wit:

(1) The affidavit of Daniel Brown, with map attached as "Exhibit A" thereto, was marked as "Defendant's Exhibit 1," and was offered and read in evidence, and is in words and figures following, to-wit:

70 DEFENDANT'S EXHIBIT 1."

* * * * * *

Affidavit of Daniel Brown for Defendant.

DANIEL BROWN, being duly sworn upon oath, says: that he is the Mayor of the defendant City of Hammond, and has been such for more than seven (7) years last past, and as such officer he is charged with the administration of the law and the enforcement of the ordinances of said City; that the Police Department of said City is under his supervision, direction and control; that he is familiar with the various and several streets of said City, particularly in the so-called business district thereof, and is also familiar with traffic conditions therein.

Affiant says that the business district of said City consists chiefly of Hohman Street from Michigan Avenue South to Condit Street, the principal business buildings on said street being located between Plummer Avenue and Clinton Street; that it consists further of State Street from State Line Street to and slightly beyond Calumet Avenue to the east, the principal business buildings of which are between Morton Court and Sohl Street; further, of Sibley Street from Oakley Avenue to Morton Court, and of a portion of Fayette Street, of Rimbach Avenue and other streets intersecting Hohman Street and within a short distance thereof, and of Calumet Avenue from Eaton Street to Grand Calumet River; that there are other business districts and centers in said City of lesser importance and extent; that Hohman Street
71 from the Grand Calumet River, which is two blocks north of Michigan Avenue, south to Russell Street is sixty feet in width; that it has a single track street car line in the center thereof from Russell Street north for a distance of six blocks, and a double track line north thereof to and beyond Michigan Avenue; that said State Street is also sixty feet in width and has a double track street car line thereon from Calumet Avenue west to Hohman Street, and a single track street car line from Hohman Street west to Morton Court; that Sibley Street has a single track street car line thereon east of Oakley Avenue, and a double track street car line from Oakley Avenue to Hohman Street, and a single track street car line from Hohman Street to Morton Court;

that Hohman Street, State Street, Sibley Street and Fayette Street are intersected and crossed by the double track railroad line of the New York, Chicago & St. Louis Railroad, the double track of the Erie Railroad, and the single track of the Chicago, Indianapolis & Louisville Railway, all with contiguous rights of way; that upon said railroads many hundreds of cars are moving each day across said streets, and frequently freight trains of a length exceeding one-half mile are hauled across said streets at grade; that said Hohman Street is further crossed at right angles by the Michigan Central Railroad, consisting of four main tracks, located silghtly more than one block north of the corner of State and Hohman Streets hereinafter referred to; that many hundreds of trains cross to and fro on said tracks during the twenty-four hours, and frequently freight trains of much more than one-half mile in length are slowly drawn across said streets at grade; that said railroad intersects the first three named railroads in or adjacent to its crossing of said Hohman Street; that the corner of State and Hohman Street has been generally referred to as the principal business corner of the City.

Affiant further says that on the accompanying map, attached hereto and made a part hereof, marked Exhibit "A," the streets and parts of streets upon which motor bus operation is forbidden are indicated in blue; that the streets within or near the business district which are open to the movement of motor coaches, whether interstate or intrastate, are indicated thereon in red.

Affiant further says that the traffic congestion problem in the City of Hammond has become a serious one, and difficult to handle and control; that the vehicular traffic on the streets in and adjacent to said business district is very heavy; that for several years jitneys were operated thereon, consisting chiefly of small touring cars, several hundred in number, which badly congested the streets, and particularly because of their stopping to load and unload passengers, they caused delay to other traffic, and by ordinance of the City, said jitney business was finally eliminated, and thereby the
72 congestion somewhat reduced; that about said time a franchise contract was entered into between the City and Calumet Motor Coach Company for the operation of motor coaches on the streets of Hammond, and said motor coaches supplanted and took the place of said jitneys, very

much to the relief of congestion and the general satisfaction and convenience of the public; that within the past six or eight months, a large number of other motor busses have been introduced into the City and its environs; that none of said motor busses, and this includes those operated by the plaintiff, have any franchise or contract of any kind with the City; that they run to and fro, and particularly through the congested business district, at times that suit their pleasure and convenience, and have added greatly to the congestion and confusion; that it is nothing uncommon for vehicular traffic to be held up with a solid line of cars extending as much as three blocks, in the heart of the business district; that such delay is caused in part by the motor busses operated by the plaintiff herein, and to a large extent by the movement of railroad trains across said streets, as hereinbefore mentioned, and in part by the narrowness and congestion of the streets generally; that immediately to the west of said City of Hammond is a city known as Calumet City in the State of Illinois; that one street, to-wit: State Line Street, is a dividing street between said states and cities, the state line being approximately in the middle thereof.

Affiant further says that the plaintiff, and other operators of motor busses having no franchise or contract with the City, run many motor busses from said Calumet City into and through the business district of the City of Hammond, and from adjoining cities and towns to the south and east to-wit: East Chicago, Griffith, Highland, Munster, Thornton, Lansing, Chicago Heights, and other places in the vicinity; that some of said busses are engaged in interstate commerce, and others wholly in intrastate commerce; that the said City Council of said City did, on May 22nd, 1925, pass Ordinance No. 1945 designed to control and regulate vehicular traffic conducted for hire in said City; that said Ordinance became effective on the 9th day of June, 1925, and is now in full force and effect.

Affiant further says that the plaintiff herein has been running and routing its motor busses engaged in service to and from Chicago, Illinois, in a way to add greatly to the confusion, congestion and delay in the business district of said City, that the street car service to which reference is made in the Bill of Complaint herein, is service that has been rendered for many years under a franchise contract, which was later surrendered for an indeterminate term in accordance

with the laws of Indiana; that service rendered by said
73 Calumet Motor Coach Company is rendered under its franchise contract with the City, which franchise service was established in November, 1924, and has been continuously maintained solely under such franchise contract.

Affiant denies that the said City, its agents or officers have any intention or purpose of destroying the interstate commerce of the plaintiff, and denies that it has discriminated among those similarly situated; that any and all having a franchise or contract to stop to receive and discharge passengers in the public streets will be accorded said privilege, and all others will be prohibited from so doing. Affiant says that the express purpose and intention of said ordinance is to promote the safety and good order of the public in said streets and to relieve congestion, confusion and delay therein; that all streets, alleys and other public places in said City not mentioned in Section 1 of said ordinance, and not indicated in blue on the accompanying map, are open to the plaintiff and all others engaged in interstate or other commerce for the purpose of passing to and fro with any and all vehicles that are lawful to be used in said commerce, or are used on the streets or highways of the State of Indiana; that the plaintiff is not denied the right so to pass; that it is denied the privilege of stopping in any street or other public place to receive or discharge passengers, and save for the streets mentioned in Section 1 of said ordinance, it is not denied nor restricted in any sense in the choice of streets over which it will pass.

Affiant expressly denies the allegation in said sworn Bill or Complaint to the effect that the highways over which it operates its motor busses are not unduly congested, and expressly affirms that they are greatly congested; that such congestion has reached the point where agitation is going on, and in some cases has been crystallized into action for the widening of certain streets; that State Street west of Hohman Street is in process of widening for a space of twenty-eight feet; that said street east of Oakley Avenue is in process of widening for a space of twenty feet; that Hohman Street south of Russell Street has recently been widened, for a space of twenty feet; that tentative plans are under way for the widening of Hohman Street from State Street to Russell Street for a space of twenty feet; that all of said enterprises entail great expense and cost to the City and the property

owners; that plaintiff insists upon operating its motor busses on Sibley Street west of Hohman Street, and affiant says that in both of said streets, there is a street car track in the middle of the street, and that it is impossible for a motor bus and a street car to pass each other in either of said streets where cars are parked at or near the curb line, and that cars are so parked on said streets for a limited time.

74 Affiant denies that any part of the streets over which the plaintiff is forbidden to run has been improved by Federal Aid, but says that on the contrary, said streets and parts of streets have been improved wholly by special assessments against the benefited property.

Affiant further says that insofar as priority of operation is concerned as between the plaintiff herein and the said Calumet Motor Coach Company, in service between the City of Hammond and the City of Chicago, Illinois, the said plaintiff herein was duly informed by the Board of Public Works of said City before it commenced said operation, that said Calumet Motor Coach Company was preparing to inaugurate such service. Whereupon the plaintiff, as affiant is informed and believes, procured a number of partially painted, unfinished and unlettered motor busses and commenced its said service with said cars for the evident purpose of being the first in the field, when it had knowledge at the time that the Company operating under a contract with the City of Hammond was about to begin such service.

Affiant says that where employes of plaintiff have been arrested under the so-called charge of "loading passengers" that said phrase was used merely by the Police Department to be an entry upon the arrest book and that in each and all cases a form of complaint was filed by the City against the defendant so arrested, charging him with the violation of Ordinance No. 1945, referred to in plaintiff's complaint.

Affiant denies that the defendant City, its Mayor, Chief of Police, officers or agents claim any right to prevent plaintiff from carrying on the business of hauling passengers for hire between the cities and State of Illinois and the State of Indiana, but merely the right to enforce the provisions of Ordinance No. 1945, and ordinances of like import and effect.

Affiant denies the allegation in said sworn Bill of Complaint that the said defendant has arrested plaintiff's employes, charging them with no other offense than simply stopping plaintiff's motor busses to pick up and let off passengers

within the City of Hammond, and affiant denies that there is any threat or intention to arrest or prosecute plaintiff's employes for so doing, but any arrests that have been made or will be made in the future are simply made for the purpose of carrying out and enforcing the provisions of said ordinance, and to prevent the stopping of plaintiff's said vericles in public streets for the purpose of transacting its private business of receiving and unloading passengers therein.

Affiant expressly denies the allegation in said Bill of
75 Complaint concerning arrest or threat to arrest plaintiff's employes because of being on the strip of ground alleged in said complaint to be a private strip of ground owned by the Hammond Hotel & Improvement Company.

Affiant further says that the question of whether said strip of ground has been dedicated to public use for a city street is now in litigation, and the defendant City has expressly agreed that pending the decision of the question of whether said strip of ground has been dedicated to public use for street purposes, defendant will treat said strip of ground as private property so far as any controversy between said defendant City and the plaintiff herein is concerned; that no arrests will be made and none have been made of any of the plaintiff's drivers for so doing, except possibly the arrest of one Lansdowne, on July 8, 1925, mentioned in said complaint, which was made by a member of the police force for violating city traffic ordinance, which cause was later dismissed and said Lansdowne discharged. Affiant says that pending the decision as to whether or not said strip of ground is a public place within the meaning of said Ordinance No. 1945, plaintiff will be permitted freely to receive and discharge passengers thereon without molestation.

Affiant further says that plaintiff has free, open and convenient access to said strip of ground for its motor busses without passing longitudinally over any street or part of street mentioned in Section 1 of said Ordinance No. 1945; that State Line Street is improved in both Indiana and Illinois by an asphalt macadam pavement and is a street of ample width and not congested; that Plummer Avenue is also a wide street in the City of Hammond paved with concrete from the State Line easterly to Oakley Avenue; that Oakley Avenue is also paved with concrete from Plummer Avenue to Michigan Avenue, and Michigan Avenue is a concrete pavement extending easterly from Hohman Street past Oakley

Avenue for more than two miles, and connecting with the main street of the City of East Chicago, Indiana; that Plaintiff's motor busses running from Calumet City, Illinois to East Chicago, Indiana, as mentioned in said Bill of Complaint, may readily, easily and speedily pass over State Line Street, Plummer Avenue, Oakley Avenue and Michigan Avenue and other improved streets in said City, none of which are unduly congested or closed to the plaintiff, except those parts of streets indicated in blue and the accompanying map, and mentioned in Section 1 of said ordinance; that plaintiff can readily, easily and conveniently operate its Chicago service from said so-called private terminal by way of Plummer Avenue, Oakley Avenue, Michigan Avenue and Hohman Street, north of Michigan Avenu, without undue delay, and on streets that are not so congested as Hohman Street
76 between Michigan Avenue and Russell Street, and with a minimum of interference with traffic on said streets; that all said streets are open to plaintiff for the movement of its said cars; that as affiant understands the controversy between the plaintiff and the defendant City, it is wholly about the question of whether the plaintiff shall be permitted to run on Hohman Street between Michigan Avenue and Sibley Street, which affiant says is the most congested portion of said street; that the defendant city has sought to place no further restrictions or limitations of any kind upon the plaintiff's said operation. Affiant expressly denies that plaintiff has been forbidden or will be forbidden to use said strip of ground as a loading and unloading ulace or prosecuted for so doing, so long as the question of its being public or private is in controversy.

Affiant denies that the said City Court of the City of Hammond has passed on the merits of any case before it, but says that on the contrary, said Court has limited its decision to a ruling on the demurrer to the complaint filed in each case, and has not heard evidence nor gone into the merits of any of such cases; that the City has appealed from each and all of said decisions so rendered by said City Court on the cases commenced on the 22nd day of July, 1925, and affiant denies the statement in said sworn bill that the City Court conducted "a full hearing thereof" in any of said cases, but says that they were disposed of only on demurrer as aforesaid; that affiant expressly denies the charge and allegation often repeated in said complaint that the enforcement of said ordi-

nance is intended to or will destroy plaintiff's interstate commerce, or that its enforcement is discriminatory or unreasonable in any sense.

(Signed) DANIEL BROWN,
Mayor.

Subscribed and sworn to before me this 14th day of September, 1925.

(Seal of District Court of the United States, District of Indiana.)

WM. P. KAPPES,
Clerk, U. S. District Court.

MAPS

TOO

LARGE

FOR

FILMING

78 (Endorsements on back of Affidavit of Daniel Brown for Defendant:

* * * * * *

Affidavit of Daniel Brown for Defendant.

(Stamped:
Filed
Aug. 6, 1925.
William P. Kappes, Clerk.

79 And thereupon defendant rested its case in chief.

And the plaintiff, to further sustain the issues upon its part, then offered in rebuttal the following evidence, to-wit:—

(1). The affidavits of Henry Schappi and Henry Schappi, Jr. were marked for identification as "Plaintiff's Exhibit 10", and were offered and read in evidence, and are in words and figures following, to-wit:—

80 "PLAINTIFF'S EXHIBIT 10."

* * * * * *

Additional Affidavit in Support of Plaintiff's Complaint for Temporary Injunction, and in Reply to the Affidavit of Daniel Brown Filed by Defendant Herein, Etc.

HENRY SCHAPPI, and HENRY SCHAPPI, JR., each being first duly sworn, upon oath say, that:

They are respectively the President and Secretary of the plaintiff, Schappi Bus Line, Incorporated, and affiants each, separately and severally, upon their oaths say, that: they have had read to them the affidavit of Daniel Brown, made by him and filed by the defendant in this cause, in opposition to plaintiff's motion for a preliminary injunction; and affiants each separately say, that: they are each familiar with, and know, the condition of motor vehicle traffic within the City of Hammond, Indiana, and in all parts of said City, and particularly in the so-called business district of said City, and that they have been personally acquainted with the condition of such vehicular traffic for many years last past;

And affiants each separately say, that, the statement, made on page four (4) of said affidavit of said Daniel Brown, to the effect, that:

"that it is nothing uncommon for vehicular traffic to be held with a solid line of cars extending as much as three blocks in the heart of the business district; that such delay is caused by the motor busses operated by plaintiff herein,"

81 is untrue, and without any foundation in fact, and affiants say, that, no such condition ever occurred to the knowledge of these affiants; and affiants say positively, that, they know that no such condition ever occurred, or was caused, at any time or place by any of the motor busses operated by plaintiff; that, if such a condition ever did occur, it was caused solely by reason of railroad trains crossing the street and stopping the traffic, and not otherwise; that, at no time was any such delay, in whole or in part, caused by motor busses, either of plaintiff, or by those owned by other persons; that such statement is an exaggeration, and is wholly untrue; that plaintiff is in no way to blame, and has nothing to do with the operation of railroad trains across the streets of the City of Hammond; and plaintiff in no way contributes to any stoppage of traffic by reason of railroad trains crossing the streets at grade in said City;

And affiants further say, that, they expressly deny the further statement in the affidavit of said Daniel Brown, found on pages four and five thereof, to the effect, that:

"The plaintiff herein has been running and routing passenger busses engaged in service to and from Chicago, Illinois, in a way to add greatly to the congestion and delay in the business district of said City."

And affiants say, that, said statement, contained in the affidavit of said Daniel Brown, is wholly untrue, and without any foundation in fact whatsoever;

And affiants further say, that, they expressly deny the statement in said affidavit of said Daniel Brown, found on page five thereof, to this effect, that:

"The plaintiff is not denied the right so to pass," meaning, to pass over the streets of the City of Hammond, as well as others engaged in interstate, or other commerce;

But, affiants say, that, said defendant, City of Hammond, through its Mayor and police officers, has entirely prohibited, by arresting plaintiff's drivers, and servants in charge of its auto busses, from operating over the streets of the City of Hammond, until the temporary restraining stipulation was

made in the presence of Judge Samuel Alschuler in this cause; that, in all, an aggregate of forty-seven (47) arrests of plaintiff's employees and drivers have been made by said defendant City, through its police officers, twenty-two (22) arrests being made upon a single day, and by means of
82 which plaintiff's auto busses and drivers were completely driven from any of the streets of the City of Hammond; and affiants say, that, it is the purpose and intention of said defendant, City of Hammond, to entirely prohibit plaintiff from carrying on its business in the carrying of passengers for hire over the public highways in the City of Hammond and State of Indiana, whether engaged either in interstate commerce or intra-state commerce; and, that, it is the intention of said defendant City so to do, notwithstanding that said defendant City, and each and all of its officers and servants, know that plaintiff is authorized by, and has received from, the Public Service Commission of Indiana, Certificates of Public Convenience and Necessity, authorizing, and empowering, and directing it to carry on its said business over said highways described in said Certificates, and described in plaintiff's complaint herein; but affiants say, that, notwithstanding, said defendant, City of Hammond, through its police officers, disregards and ignores said Certificates of Public Convenience and Necessity, and arrests, and will continue to arrest and drive plaintiff's employees and auto busses from the streets of the City of Hammond, unless said defendant, and its officers and servants, are enjoined and restrained from so doing;

And affiants further say, that, they separately and severally deny the statement in said affidavit of said Daniel Brown, found at page five thereof, to the effect, that:

"Plaintiff is not denied, nor restricted, in the choice of streets over which it will pass."

That, said statement is untrue, in this, that: the said defendant City, through its police officers, has denied plaintiff the right to operate over the only streets leading into the business district of the City of Hammond, and have discriminated against this plaintiff, and arrested its employees, and driven plaintiff's auto busses from the streets, and bus drivers from the streets by force, while, at the same time and place, and over the same streets, said City, and its police officers, permitted and allowed other persons and corporations to operate auto busses in the carrying of passengers for hire, engaged in the exact, same identical business of trans-

porting passengers for hire in which plaintiff was then and there engaged when plaintiff's employees and drivers were arrested;

And affiants each further say, that, they expressly deny the statement contained in the affidavit of said Daniel Brown, and found at pages six and seven thereof, to the effect, that: the Board of Public Works of the City of Hammond informed plaintiff, before it began the operation of its 83 motor busses and service, that the Calumet Motor Coach Company was preparing to inaugurate a service;

And affiants further deny the statement, that, in the affidavit of said Daniel Brown, found at page seven of said affidavit, to the effect, that:

"The plaintiff * * * procured a number of partially painted, unfinished, and unlettered motor busses, and commenced its service with said cars, with the evident purpose of being the first in the field, when it had knowledge at the time that the company, operating under a contract with the City of Hammond, was about to begin its said service."

And affiants say, that, said statement in said affidavit of Daniel Brown, and each and every part, is wholly untrue, and without any foundation in fact whatsoever.

And affiants further say, that, they expressly deny the further statement in the affidavit of Daniel Brown, found on page eight thereof, to the effect that:

"The question of whether said strip of land has been dedicated to public use for a city street, is now in litigation."

That, affiants are informed, and believe, that no such litigation exists involving said question; and affiants are further informed, and believe, that said strip of ground has never been dedicated to public use for a city street by any person or persons whomsoever, and that no such dedication exists;

And affiants further say, that, they are informed, and believe, that said strip of ground, used by plaintiff in connection with its waiting room and private terminal at Number 536 Hohman Street in the City of Hammond, in the Indiana Hotel Building, is private property owned in fee simple by the Hammond Hotel & Improvement Company, a corporation, which company has leased said waiting room at Number 536 South Hohman Street, together with the right to use said strip of ground, for loading and unloading purposes, for a period of five (5) years from the first day of August, 1925; and, that, plaintiff is so using the same at this time, and has

been continuously since the date of said lease, and by verbal permission of the owners, and by parol permission and license even prior to said date;

And affiants further say, that, by actual count and estimates made of the number of motor vehicles, and other vehicles, passing over Hohman Street and other streets of the City of Hammond, that they affirm and say on oath, that
84 the streets of said City are not unduly congested by reason of vehicular traffic; that on Hohman Street, and upon State Street, and upon Sibley Street, the number of actual moving vehicles, including motor and other vehicles, will rarely, if ever, exceed at any one period, six (6) moving vehicles within a city block, or a distance of approximately three hundred (300') feet at any one time; that, exceptionally, a railroad train, crossing the streets of the City of Hammond, in and near the business district, does stop the vehicular traffic on the streets of said City, resulting in the congregating of more vehicles therein at any one period than as aforesaid; but, when the vehicular traffic of the City of Hammond is not stopped by railroad trains, it rarely, if ever, happens that more than six (6) moving vehicles have been found and counted within any one given block at a given time in any portion of said City of Hammond;

And affiants say, that, the public highways and streets of the said City of Hammond are sufficiently wide, and so constructed, as to accommodate more than double the amount of vehicular traffic now passing thereon; that all seeming congestion, that does appear and result in said City, and in the streets thereof, is caused, not by the vehicular traffic and the auto bus service rendered by plaintiff and other auto bus companies thereon, but it is caused, first: by the railroad trains, which frequently cross the streets of said City, causing a stoppage in the moving traffic; and, second: by the further cause resulting from the parking of an unreasonable and undue number of motor vehicles and auto busses along the sides of the curb and streets of said City, which parking of vehicles said defendant City permits for one (1) hour and more on each and all of the streets of said City;

That on said Hohman Street, and upon said State Street, and upon said Sibley Street, in the most important and most fully built-up business portion of said streets, and each of them, said defendant now permits any automobile, or other vehicle, to park on either side of said street at practically every point for a period of one (1) hour, without molesta-

tion; that two lines of motor vehicles, parked on each side of said streets, has the effect of narrowing the usable part of said streets; that practically all the apparent congestion, that appears on the streets of said City of Hammond, affiants say, is caused by those two causes hereinabove set forth; and affiants say, that, this plaintiff does not, and has not, at any time heretofore, since it began the operation of its auto busses in the carrying of passengers for hire, at any time or place, parked its auto busses on any of the streets of the City of Hammond; that it has never at any time or
85 place parked, or sought to park, the same for any period of time whatsoever; that the only time that it has stopped its auto busses has been for the taking on and letting off of passengers, at which times said stop has not at any time exceeded from two (2) to five (5) minutes' time; that plaintiff has at all times, in the operation of its auto busses in the carrying of passengers for hire, when the passengers have been unloaded therefrom, unless such auto bus was to proceed in a further trip, plaintiff has sent said auto bus immediately to plaintiff's garage in the City of Calumet City, Illinois, there to be put in the garage and remain until it was necessary to use the same in plaintiff's business; and affiants say, that, plaintiff is in no way responsible for said alleged congestion in the streets of the City of Hammond, which is caused solely by the acts aforesaid, and by the neglect of the officials of said defendant City of Hammond to enforce reasonable and proper parking ordinances in said city;

That plaintiff's auto busses, used on the several routes as described in its complaint herein, only pass over each of said routes at periods of approximately twenty (20) minutes; that said passage of plaintiff's said auto busses in no way conflicts with, or hinders, other vehicular traffic, or pedestrian traffic, on the streets of said city; that plaintiff has at all times complied with all police regulations for the safety of pedestrian traffic at the intersection of streets, alleys and railroad crossings, and other public places; that plaintiff has complied with all rules and regulations of the State of Indiana, and all laws thereof, all and singular, and stands ready and willing at all times so to do, as well as all reasonable and proper regulations of said City of Hammond;

But affiants say, that, it is the purpose of said defendant, City of Hammond, by the ordinance which it has passed, at the request of said Calumet Motor Coach Company, to pro-

hibit plaintiff from operating and carrying on its said business in said City of Hammond, and passing over the public highways in said city; not for the purpose of regulating traffic particularly, but for the sole and only purpose of prohibiting and preventing competition with said Calumet Motor Coach Company more than anything else;

And affiants further say, that, they are informed, and believe, and so charge the fact to be, that it is not the City of Hammond, defendant herein, so much that seeks to prevent plaintiff from operating its said auto busses in the carrying of passengers for hire, but that said City, and its said officials, are influenced in their persecution of plaintiff, to do and continue the same, by the officials and representatives of said Calumet Motor Coach Company; that, in fact,
86 the process of arrest, and the police officials of the City of Hammond, are being used unlawfully to persecute plaintiff, through the influence of the officers and officials, and representatives, of said Calumet Motor Coach Company with such officials and officers of said City, and not for any public purpose; that the acts of said defendant City, and its officials, are, therefore, as affiants believe, and so charge the fact to be, for the purpose of persecuting this plaintiff in an endeavor to drive it from carrying on its business, which it has established, and to completely prohibit it from carrying on its business in the carrying of passengers for hire, both interstate and intra-state, to the end that plaintiff will be prevented from in any way competing with said Calumet Motor Coach Company; that the prosecution and arrests, and interference, of said defendant, City of Hammond, through its Mayor and police officials and servants, with this plaintiff were not in good faith, as affiants verily believe, but are carried on for an ulterior purpose, and not for the public benefit; that such ulterior purpose is, as these affiants verily believe, the direct interference with the business of this plaintiff, and for the purpose of prohibiting it, and preventing it, from carrying on its business as aforesaid, to the end, that, said Calumet Motor Coach Company, who the City officials of the City of Hammond desire to favor, shall not have the competition of plaintiff, notwithstanding that plaintiff, as aforesaid, has received and obtained the authority to carry on its business, as evidenced by the Certificates of Public Convenience and Necessity, issued to it by the Public Service Commission of Indiana, the public body which has full and complete jurisdiction to regulate the carrying of passengers

for hire by motor vehicles, over the public highways of the State of Indiana; that said defendant City, and its officials, simply disregard and ignore plaintiff's rights, and unlawfully arrest plaintiff's drivers and employees in their unlawful attempt to prohibit, and prevent, plaintiff from carrying on its business in the transporting of passengers for hire, as aforesaid, and to aid said Calumet Motor Coach Company, and for no other purpose.

And affiants further say, that, unless the defendant, City of Hammond, its Mayor, and police officers, are restrained and enjoined from further interfering with plaintiff, and plaintiff's employees, as alleged and set forth in plaintiff's complaint in this cause, and in this affidavit, said defendant will entirely ruin and destroy plaintiff's business, to its great and irreparable loss and damage; that plaintiff has invested in its several auto busses and equipment for carrying on said business, more than Fifty Thousand ($50,000.00) Dollars in capital; that it employs fifteen (15) drivers daily; that it has established a bus terminal on private ground, and in private building in the City of Hammond, out of
87 which, and from which, it operates; that it, also, has established a private terminal in the City of Chicago, Illinois, and in other places; that it has established a like private terminal in Calumet City, Illinois; in all, involving an outlay and investment of capital of approximately Seventy-five Thousand ($75,000.00) Dollars; that, if plaintiff is prohibited, by said defendant, City of Hammond, from carrying on its business as aforesaid, over the public highways, where it has been authorized by the Public Service Commission of Indiana, by lawful Certificates of Public Convenience and Necessity so to do, that said capital, so invested, will be largely, if not entirely, lost,—all to plaintiff's irreparable loss and damage.

And affiants further say, that, said purported ordinance entirely forbids plaintiff from carrying on its business, either in interstate carriage of passengers, or in intra-state carriage of passengers, without it can obtain the permission of the Board of Public Works of said City, and which permission said Board of Public Works has arbitrary power, under said alleged ordinance, to withhold for any reason, or upon any ground, or any cause whatsoever; that, by Section 2 of said ordinance, plaintiff, while engaged in the carrying of interstate commerce, would not be permitted to come farther south in said City of Hammond than 122nd Street and Calu-

met Avenue, which means, not nearer to the business section of said city of Hammond than approximately four (4) miles; that said alleged ordinance is unreasonable, unfair, and void; and is an arbitrary and unlawful discrimination against this plaintiff; that said ordinance was passed by the Common Council of the City of Hammond in bad faith, and at the request of said Calumet Motor Coach Company, and for the sole and only purpose of permitting and enabling said defendant, City of Hammond, to discriminate against plaintiff, and other auto bus operators, in favor of said Calumet Motor Coach Company, and for no other purpose whatsoever; that the primary purpose of said ordinance is not regulation of vehicular traffic, with a view to safety, or conservation of the highways; but, instead, is for the sole and only purpose of prohibiting plaintiff, and for other operators of auto bus companies, from competing in any way whatsoever with said Calumet Motor Coach Company; that said ordinance does not determine the manner of use of the highways; but, instead, attempts to determine, and attempts to give, to the Board of Public Works of the City of Hammond, an arbitrary power of determining, who may use the highways within the corporate limits of said City, for the purpose of carrying passengers for hire; that said ordinance, on its face, prohibits the use of public highways in said city to some persons, including this plaintiff, while permitting the use of said public highways in said city by others, for the same identical
88 purposes, and in the same identical manner; and, further, said purported ordinance, on its face, gives to said Board of Public Works of the City of Hammond an arbitrary power to determine whether the prohibition, contained therein, shall be applied to one person, and not as to other persons under the same or similar circumstanes; that, by reason of each and all of the aforesaid facts, affiants say, that said ordinance is unfair and unreasonable, and void, and creates an unfair discrimination against this plaintiff, and against the business of this plaintiff, and against the Public generally in the City of Hammond, who patronize this plaintiff;

That plaintiff is the original person who engaged in bus transportation of passengers for hire in the City of Hammond; that plaintiff, and its immediate successors, have been engaged in transporting passengers for hire in the City of Hammond, and in the City of East Chicago, and in Calumet City, and to the City of Chicago, Illinois, for approximately

six (6) years, and have been so engaged in all of said time continuously; that, in such way, plaintiff has established said business and a patronage that will be entirely destroyed unless said defendant, City of Hammond, is enjoined and restrained from further unlawful interference with plaintiff's business; and further affiants say not.

(Signed) HENRY SCHAPPI
(Signed) HENRY SCHAPPI, JR.

Subscribed and sworn to before me this 14th day of September, A. D. 1925.

(Signed) W. J. WHINERY,
(Notarial Seal) *Notary Public.*

My notary commission expires November 20, 1927.

89 (Endorsements on back of Additional Affidavit, etc.:

* * * * * *

Additional Affidavit in Support of Plaintiff's Complaint for Temporary Injunction, and in Reply to the Affidavit of Daniel Brown, Filed by Defendant Herein, etc.

Wm. J. Whinery
Attorney and Counselor
Hammond, Ind.
Long Distance Tel. 269

90 (2). And plaintiff, at the close of the introduction of evidence in rebuttal as aforesaid, tendered its bond, signed by plaintiff as principal and the United States Fidelity & Guaranty Company as surety, by which bond plaintiff undertook to pay to the defendant any and all damages and costs, which might accrue to defendant by reason of a temporary injunction.

And This Was All the Evidence Given in the Cause on the Hearing Upon Plaintiff's Motion for a Temporary Injunction.

And the said Judge of said Court, after hearing the argument of the respective counsel, took said motion for a preliminary injunction under advisement.

And afterwards, to-wit:—on the 21st day of September, A. D. 1925, the said Judge of said Court, having considered the motion of plaintiff for a preliminary injunction in this cause, and the evidence introduced by the respective parties in support of said motion, and in opposition to the same, and

being sufficiently advised in the premises, refused to grant said temporary injunction, and denied said temporary injunction so prayed for by the plaintiff, to which rulings of the said Judge of said Court the plaintiff at the time duly excepted, asked, and was given thirty (30) days' time
91 within which to prepare and file all Bills of Exceptions.

And now, in furtherance of justice, and that right may be done, the plaintiff comes and tenders, and presents, the foregoing as its Bill of Exceptions in this case to the action of the said Judge of said Court in refusing to grant said temporary injunction, and in denying plaintiff's motion for a temporary injunction as aforesaid, and plaintiff prays that the same may be examined, settled, allowed, approved, signed, and sealed by the Judge of said Court, and made a part of the record in this cause;

And the said Judge of said Court, after having examined said Bill of Exceptions, finds that the same is true, complete, and properly prepared, and the said Judge of said Court now approves the same in all respects, and now approves the inserting therein by reference of plaintiff's verified complaint marked as "Plaintiff's Exhibit 1," and likewise defendant's answer, inserted therein by reference, and marked "Plaintiff's Exhibit 2," the same as though said exhibits had been copied in full therein; all in accordance with the provisions of Rule 10, Clause 3, of the Rules of the United States Circuit Court of Appeals for the Seventh Circuit, which said exhibits "1" and "2" as aforesaid, were thus inserted by a reference as aforesaid, to avoid repetition in the transcript of the record in this cause;

And said Bill of Exceptions is now, by the said Judge
92 of said Court, in all things approved, settled, allowed, signed, and sealed by the said Judge of said Court, and made a part of the record in said cause, and the Clerk of said Court is ordered to file the same in his office in said cause, and that said Bill of Exceptions become a part of the record in said cause for the purpose of an appeal, all of which is accordingly done this 15th day of October, A. D. 1925.

In Testimony Whereof, I, Thomas W. Slick, Judge of said United States District Court, within and for the District of Indiana, have hereunto set my hand and seal this 15th day of October, A. D. 1925.

THOMAS W. SLICK
Judge of the United States District Court for the District of Indiana, presiding in said cause.

Sept. 15. 39 And afterwards, to-wit: On the 15th day of September, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, in Chambers, at South Bend, Indiana, the following further proceedings were had and entered of record in the above entitled cause, to-wit:

* * * * * *

Come again the parties, plaintiff and defendant, by their respective attorneys, before the Honorable Judge of said Court, in Chambers, at South Bend, Indiana, and the hearing on the motion of plaintiff for a preliminary injunction is resumed, and the said Judge of said Court, after hearing the argument of the respective counsel, took said motion for a preliminary injunction under advisement.

Sept. 21. 40 And Afterwards, to-wit: On the 21st day of September, A. D. 1925, before the Honorable Thomas W. Slick, one of the Judges of said Court, the following further proceedings were had and entered of record in said cause, to-wit:

* * * * * *

Come again the parties, plaintiff and defendant, by their respective attorneys, and the said Judge of said Court, having considered the motion of plaintiff for a preliminary injunction in this cause, and the evidence introduced by the respective parties in support of said motion, and in opposition to the same, and being sufficiently advised in the premises, refused to grant said temporary injunction, and denied said temporary injunction, prayed for by the plaintiff, to which rulings of the said Judge of said Court the plaintiff at the time duly excepted, asked, and was given thirty (30)
41 days' time within which to prepare and file all Bills of Exception, and plaintiff also prayed an appeal from said interlocutory order of the said Judge of said Court, refusing to grant and denying said temporary injunction, to the United States Circuit Court of Appeals for the Seventh Circuit, which appeal was, by the said Judge of said Court, granted upon the said plaintiff filing its appeal bond in the sum of One Thousand ($1000.00) Dollars within thirty (30) days from said date, with the United States Fidelity & Guaranty

Company of Baltimore, Maryland, as surety thereon, or with A. Murray Turner, or William J. Whinery, or either of them, as sureties thereon, or with the National Surety Company of New York as surety thereon; either of which sureties were approved by the said Judge of said Court.

96 And, also, on said 15th day of October, A. D. 1925, the said Plaintiff filed in the office of the Clerk of said United State District Court, for the District of Indiana, its notice of appeal to the United States Circuit Court of Appeals for the Seventh Circuit, to the defendant, City of Hammond, a municipal corporation, with acknowledgment of service of same by the attorneys for said defendant, which notice is in words and figures following, to-wit:

97 • • • • • •

NOTICE OF APPEAL BY PLAINTIFF TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To: The City of Hammond, a municipal corporation, Defendant:

Please take notice that the undersigned, plaintiff in the above entitled cause, hereby appeals from the interlocutory order and decree, and decision, of said United States District Court for the District of Indiana, entered in the above entitled cause on the 21st day of September, A. D. 1925, refusing and denying a preliminary injunction in said cause, to the United States Circuit Court of Appeals for the Seventh Circuit.

Dated at Hammond, Indiana, this 14th day of October, A. D. 1925.

A. J. WHINERY,
Attorney for Plaintiff.

We hereby acknowledge notice of the foregoing notice of appeal in the above entitled cause this 14th day of October, A. D. 1925.

W. W. MCMAHON, *City Atty.,*
Attorney for Defendant,
City of Hammond.

98 And, also, on said 15th day of October, A. D. 1925, the said plaintiff filed in the office of the Clerk of said United States District Court for the District of Indiana its petition for appeal to the United States Circuit Court of Appeals for the Seventh Circuit, together with said plaintiff's Assignment of Errors on appeal, which said appeal is then and there allowed by the Honorable Thomas W. Slick, Judge of said Court, presiding in said cause, and which said petition for appeal to the said United States Circuit Court of Appeals for the Seventh Circuit, and the Court's allowance of said appeal, and the Assignment of Errors on such appeal, are in words and figures following, to-wit:

99 • • • • • •

PETITION FOR APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To: The Honorable Thomas W. Slick, Judge of the United States District Court for the District of Indiana:

The above named plaintiff, conceiving itself aggrived by the interlocutory order and decree, made and entered in the above entitled cause on the 21st day of September, A. D. 1925, denying and refusing to grant a temporary injunction in said cause, as prayed for by said plaintiff, does hereby appeal from said interlocutory order and decree to the United States Circuit Court of Appeals for the Seventh Circuit for reasons specified in the Assignment of Errors, which is filed herewith; and said plaintiff prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers, upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Seventh Circuit.

A. J. WHINERY,
Attorney for Plaintiff.

101 • • • • • •

ASSIGNMENT OF ERRORS ON APPEAL.

And, now, on this, the 14th day of October, A. D. 1925, came the above named Schappi Bus Line, Incorporated, a corporation, plaintiff in the above entitled cause, and says, that, the interlocutory order or decree, made and entered herein on the 21st day of September, A. D. 1925, denying and refusing to grant a preliminary injunction against the defendant in this cause, as prayed for by the plaintiff in this cause, is erroneous, and against the just rights of said plaintiff for each of the following reasons, to-wit:

First: Because, as it appears from the record in this cause, plaintiff was entitled to a preliminary injunction in said cause against said defendant, and its application for such interlocutory or preliminary injunction should have been granted as prayed for, and the Judge of said United
102 States District Court for the District of Indiana erred in denying and refusing to grant the same.

Second: Because, as it appears from the record in this cause, the said Judge of said United States District Court for the District of Indiana erred in denying and refusing to grant a preliminary injunction in said cause, as prayed for by plaintiff, so that the statu quo might be maintained, and plaintiff protected from unlawful interference with plaintiff's business by defendant, its agents and servants, until a full and final hearing in said cause might be had in said Court; because it further appeared, by plaintiff's verified complaint filed in said cause, that plaintiff was entitled to the relief prayed for in said complaint, and that plaintiff was without any adequate remedy at law; and, that, plaintiff was suffering irreparable injury by reason of the acts of the defendant, its agents and servants, in unlawfully interfering with plaintiff in the carrying on of its business in the carrying of passengers for hire, and in the conduct of interstate commerce in the carrying of such passengers for hire, and said plaintiff would continue to suffer great injury and irreparable damage during the litigation unless defendant, its agents and servants, were enjoined from continuing such interference with plaintiff, and with the carrying on of plaintiff's business, as alleged in plaintiff's verified complaint, and that defendant was threatening to continue such acts, as alleged,

unless defendant, its agents and servants, were enjoined
103 and restrained from so doing; and it was, therefore, the duty of the said Judge of said Court to grant a temporary injunction against the defendant, enjoining the defendant, its agents and servants, from interfering with plaintiff, and with the carrying on of plaintiff's business, during the litigation, and until a final hearing in said cause could be had.

Third: Because, as it appears from the record in this cause, plaintiff had obtained, from the Public Service Commission of Indiana, Certificates of Public Convenience and Necessity, authorizing plaintiff to engage in the carrying of passengers for hire as a common carrier, by means of motor busses, on, and upon, and over certain public highways in the State of Indiana, and upon, and over certain public highways in the State of Indiana and leading to, and connecting with, other public highways in the State of Illinois; and, that, as such common carrier of passengers for hire, plaintiff was engaged, as a common carrier, in furnishing motor bus service in the carrying of passengers between the states of Indiana and Illinois, and more particularly between Calumet City, Illinois, and the City of Hammond, Indiana, and the City of East Chicago, Indiana, and between the City of Hammond, Indiana, and the City of Chicago, Illinois; and, that, plaintiff had been duly authorized, by the Public Service Commission of Indiana granting the Certificates of Public Convenience and Necessity, authorizing plaintiff to so operate its motor vehicles in the carrying of such passengers for hire over
104 the public highways in the State of Indiana, and within the City of Hammond; yet, notwithstanding, as it further appears from the record in this cause, the said defendant City of Hammond undertook, unlawfully, to prevent plaintiff from so carrying on its business in the carrying of passengers for hire within the State of Indiana over said public highways, where the Public Service Commission of Indiana had granted such Certificates of Public Convenience and Necessity; and, also, said defendant City of Hammond undertook to prohibit and prevent plaintiff from carrying passengers for hire while engaged in interstate commerce in the carrying of passengers from Calumet City in Illinois to the cities of Hammond and East Chicago in the state of Indiana, and in the carrying of passengers from Hammond, Indiana, to the City of Chicago, Illinois; all of which acts of said defendant, City of Hammond, were in direct violation of plain-

tiff's rights, as guaranteed to it by Clause 1 of the 14th Amendment to the United States Constitution, wherein it is provided, that:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person, within its jurisdiction, the equal protection of the laws."

And, likewise, in violation of Section 8 of Article 1 of the United States Constitution, providing that, the jurisdic-
105 tion over interstate commerce, or commerce among the several states, shall be exclusive in the Congress of the United States.

Fourth: Because, as it appears from the record in this cause, the defendant, City of Hammond, unlawfully discriminated against this plaintiff in the carrying on of its business, in the carrying of passengers for hire as a common carrier, in the conduct of interstate commerce within the states of Illinois and Indiana, in violation of Article 4, Paragraph 2, Clause 1, of the United States Constitution; and, likewise, in violation of Section 1 of the 14th Amendment to the United States Constitution.

Fifth: Because, as it appears from the record in this cause, the defendant, City of Hammond, unlawfully undertook to prohibit and forbid plaintiff from carrying on its business, as a common carrier of passengers for hire, in the conduct of interstate commerce between the states of Illinois and Indiana, in violation of the "Commerce Clause" of the United States Constitution, to-wit: Article 1, Section 8.

Sixth: Because, as it appears from the record in this cause, the defendant, City of Hammond, unlawfully undertook to prohibit plaintiff from carrying on a lawful business in the carrying of passengers for hire, as a common carrier, over the public highways of the State of Indiana, notwithstanding that plaintiff had obtained, from the Public
106 Service Commission of Indiana, Certificates of Public Convenience and Necessity, as required by the laws of said State, authorizing said plaintiff so to do; which unlawful acts of said defendant, City of Hammond, as it appears from the record in this cause, were in contravention of the natural rights of plaintiff, and all individuals engaged in a similar business of carrying passengers for hire.

Seventh: Because, as it appears from the record in this cause, the said United States District Court for the District

of Indiana, erred in refusing to enjoin the enforcement of the City Ordinance of the City of Hammond, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City; because, as it further appears from the record in this cause, said ordinance is invalid, in that, it attempts to make it unlawful for any one to carry passengers for hire, as a common carrier, over the public highways of the State of Indiana, within said City of Hammond, without a license or permit from the Board of Public Works of said City of Hammond, and which said ordinance leaves the granting, or refusal to grant, of such license or permit wholly within the uncontrolled and arbitrary discretion of said Board of Public Works, without prescribing any uniform rules or provisions governing the obtaining of such license or permit, but leaving the power to grant one person such a license or permit and to refuse another, under the same circumstances; and which said ordinance is invalid as being in violation of Section 23, Article 1, of the Indiana Constitution; and, likewise, in violation of Section 1 of the 14th Amendment to the United States Constitution; and, likewise, in violation of Clause 1, Section 2 of Article 4 of the United States Constitution.

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Eighth: Because, as it appears from the record in this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City, which said ordinance is unconstitutional and void for indefiniteness and uncertainty, in that, it prescribed no rule governing the granting or refusing of a license or permit by the Board of Public Works of said City, and attempted to give to the Board of Public Works of said defendant City an uncontrolled, arbitrary discretion to grant one person a license or permit, and to refuse another, under the same circumstances.

Ninth: Because, as it appears from the record in this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City, notwithstanding that said ordinance is unlawful, unconstitutional, and void, in that, it attempts to prohibit and place an undue burden upon interstate commerce, in contravention of Section 8 of Article 1 of the United States Constitution.

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Tenth:—Because, as it appears from the record in this cause, the defendant, City of Hammond, unlawfully discriminated against this plaintiff in the carrying on of its business, in the carrying of passengers for hire as a common carrier, in the conduct of interstate commerce between the states of Illinois and Indiana, in this, that it permitted other carriers of passengers for hire to pass over the same public highways in said City, to stop thereon to let off and take on passengers; and, yet, undertook to prohibit and forbid, and did prohibit and forbid, this plaintiff from either passing over said same public highways in said City of Hammond, or from stopping thereon to let off or take on passengers, which passengers plaintiff was then and there carrying as passengers for hire, as a common carrier, in the conduct of interstate commerce between said states of Illinois and Indiana; all in violation of the "Commerce Clause" of the United States Constitution, to-wit: Article 1, Clause 8, and, likewise, in violation of Article 4, Paragraph 2, Clause 1, of the United States Constitution; and, likewise, in violation of Section 1 of the 14th Amendment to the United States Constitution, and notwithstanding that plaintiff had then and there obtained, from the Public Service Commission of the State of Indiana, as required by law, Certificates of Public
109 Convenience and Necessity, duly authorizing it to act as a common carrier in the carrying of such passengers for hire by motor vehicles over said same public highways in said State of Indiana.

Eleventh: Because, as it appears from the record in this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City, notwithstanding that said ordinance is unreasonable, unlawful, unconstitutional, and void, in that, it authorizes and directs the Board of Public Works of said City of Hammond to arbitrarily deny to plaintiff permission to operate its motor busses in the carrying of passengers for hire, as a common carrier, over the public highways within said City of Hammond, notwithstanding that plaintiff was then and there authorized, by Certificates of Public Convenience and Necessity, issued to plaintiff by the Public Service Commission of Indiana, so to do, and which said ordinance, so authorizing the Board of Public Works of said City of Hammond to thus arbitrarily deny

plaintiff such permission to operate its motor bus lines over said public highways, thereby deprives plaintiff of its property without due process of law, in contravention of Section 1 of the 14th Amendment to the United States Constitution; that, all sections, and provisions, and portions, of said ordinance aforesaid are so mutually connected with, and de-
110 pendent upon, the unreasonable and invalid portions that the entire ordinance is invalid, unreasonable, and void.

Twelfth: Because, as it appears from the record in this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City of Hammond, notwithstanding that said ordinance is void because it is in excess of the powers given to said defendant, City of Hammond, in the following respects, to-wit:—

That the control of the operation of motor vehicles, transporting passengers for hire upon public highways in the State of Indiana, including streets within the limits of municipal corporations in said State, is exclusively within the jurisdiction of the Public Service Commission of Indiana, under, and by virtue of, an Act of the General Assembly of said State, approved March 4, 1925, and the Acts to which said Act is supplemental;

That by Section 5 of said Act of March 4, 1925, it is provided that in any city or town of the State of Indiana, where motor transportation is furnished under or by color of a contract, and in cities or towns contiguous thereto, the Board of Public Works, Common Council, or Board of Trustees, as the case may be, shall continue to supervise, control, and regulate such service, and to determine when, if at all,
111 for public convenience and necessity, competing service shall be established; that said proviso, thus attempting to exempt such cities from the jurisdiction and control of the Public Service Commission, is invalid, in this, that: it attempts to create, and does create, an arbitrary classification of cities and towns within said State, not bearing any reasonable or just relation to the subject matter of said Act in respect to which the proposed classification is made; that said proviso in said Section 5 of said Act attempts to make, and does make, the cities and towns affected thereby, the subjects of local and special regulation, in direct contravention of Sections 22 and 23 of Article 4 of the Constitution

of the State of Indiana; that said proviso of said Section 5 is discriminatory, and does not apply equally to all cities and towns naturally falling within the same classification, and attempts to grant privileges and immunities to such cities and towns, and to the inhabitants thereof, not granted to all citizens, and thereby contravenes Section 1 of the 14th Amendment to the United States Constitution;

That said proviso in Section 5 of said Act of March 4, 1925, is separate and divisible from the remaining portions and sections of said Act, and is not within the title of said Act, and is, therefore, unconstitutional and void, in that, it violates Section 19 of Article 4 of the Indiana Constitution, which requires, that:

"Every act shall embrace but one subject and matters
112 properly connected therewith, which subject shall be expressed in the title."

Thirteenth: Because, as it appears from the record in this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City, notwithstanding that it, likewise, appears from the record in this cause, that, said defendant City discriminates against this plaintiff by enforcing said ordinance against this plaintiff, and not against the Calumet Motor Coach Company; that such ordinance, and such actions of said defendant, City, under said ordinance, is discriminatory against plaintiff, and grants to the said Calumet Motor Coach Company privileges and immunities, which, upon the same terms, are not granted to plaintiff, which ordinance and action of said defendant City are in contravention of Section 23, Article 1 of the Constitution of Indiana; that the enforcement of said ordinance against this plaintiff, and not against the Calumet Motor Coach Company, which company is engaged in like business with the plaintiff, upon the self-same streets of the City of Hammond, denies to plaintiff the equal protection of the laws, and deprives plaintiff of its property without due process of law, in contravention of Section 1 of the 14th Amendment to the United States Constitution; that said ordinance excludes, by the terms of Section 1 thereof, all motor vehicles transporting passen-
113 gers for hire entirely from the streets of said City of Hammond named in said Section 1, and said ordinance deprives such carriers by motor vehicles of the right to stop

to receive, or discharge, passengers on any of the streets of the City except under permits granted by the Board of Public Works of said City on certain streets named in Section 2; but the third section of said ordinance provides that said ordinance shall not be construed to impair the obligation of any contract to which the said City is a party; that said City of Hammond is, as shown by the record in this cause, a party to an alleged franchise or contract with said Calumet Motor Coach Company; and, under color of such alleged franchise, and the provisions of said ordinance, said defendant City permits said Calumet Motor Coach Company, without hindrance, to carry on the self-same business in the carrying of passengers for hire, over the public highways within the said City, while, at the same time, prohibiting plaintiff from doing a like business; that said defendant, City of Hammond, enforces each and all of the provisions of said ordinance against plaintiff, and not against said Calumet Motor Coach Company; that such action of said defendant City is an unlawful discrimination against plaintiff; and, by the interpretation which the defendant City thus places upon said ordinance, renders the same invalid, unreasonable, arbitrary, unconstitutional, and void.

Fourteenth: Because, as it appears from the record in
114 this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City, in this, that, as it likewise appears from the record in this cause, the principal business in which plaintiff is engaged is interstate commerce, in the carrying of passengers for hire between the City of Chicago, Illinois, and the City of Hammond, Indiana, and the said ordinance prohibits plaintiff from carrying on such business within the defendant, City of Hammond, in direct contravention of Section 8, Article 1, of the United States Constitution.

Fifteenth: Because, as it appears from the record in this cause, the said United States District Court, for the District of Indiana, erred in refusing to enjoin the enforcement of the ordinance, set out at length in plaintiff's verified complaint in this action, being Ordinance Number 1945 of the ordinances of said defendant City, in this, that: said ordinance shows, upon its face, that it was not passed by said defendant City with a view to safety or conservation of the

highways, nor as a regulation as to the manner of use of the highways; but, instead, that it was passed for the sole purpose of prohibiting competition with the said Calumet Motor Coach Company and others operating under some color of contract with said defendant City; that said ordinance prohibits the use of the public highways in said
115 City to the plaintiff while permitting the Calumet Motor Coach Company, and others, to use said public highways for the same purpose, and in the same manner; and said ordinance leaves it to the arbitrary determination of the Board of Public Works of said City whether the prohibition therein contained shall be applied, and to whom it shall be applied, without furnishing any uniform rule for such determination; and said ordinance further prohibits the use of the public highways within said City by persons engaged in interstate commerce, such as plaintiff, without the permit from said Board of Public Works, and prohibits the use of said public highways in said City, even for persons engaged in interstate commerce, such as plaintiff, except in a limited district, north of 122nd Street and east of Calumet Avenue, which restriction prohibits plaintiff from entering, or passing over the public highways within all of the principal portions of said City; and, in fact, prohibits plaintiff, while engaged in interstate commerce, from receiving or letting off passengers within a distance of approximately four (4) miles of the business center of said defendant City of Hammond.

Wherefore, the said plaintiff prays that said interlocutory order or decree, denying and refusing to grant a preliminary injunction in said cause, may be in all things reversed, and that said United States District Court, for the District of Indiana, may be directed to grant a preliminary injunction in said cause against said defendant, City of Hammond,
116 its agents, servants, and employees, as prayed for in plaintiff's verified Bill of Complaint, and for all other proper and further directions and relief to which plaintiff may be entitled in equity.

W. J. WHINERY,
Attorney for Plaintiff.

100 The foregoing claim of appeal is allowed this 15th day of October, A. D. 1925.

THOMAS W. SLICK,
Judge, United States District Court for the District of Indiana.

117 And, also, on said 15th day of October, A. D. 1925, the said plaintiff filed in the office of the Clerk of said Court its appeal bond on said appeal to the United States Circuit Court of Appeals, for the Seventh Circuit, with the United States Fidelity & Guaranty Company as surety thereon, after said appeal bond had been duly approved by the Honorable Thomas W. Slick, Judge of said Court, presiding, and which said appeal bond, and the Court's approvel thereof, is in words and figures following, to-wit:—

118 * * * * * *

APPEAL BOND.

Know All Men by These Presents, That: Schappi Bus Line, Incorporated, a corporation, as Principal, and the United States Fidelity & Guaranty Company, a corporation, as Surety, are held and firmly bound to the City of Hammond, a municipal corporation, in the penal sum of One Thousand ($1000.00) Dollars, to be paid to said City of Hammond, and for the payment of which, well and truly to be made, we bind ourselves, our representatives, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of October, A. D. 1925.

The condition of the above obligation is such, that, Whereas: On the 21st day of September, A. D. 1925 said Schappi Bus Line, Incorporated, a corporation, the plaintiff in the above entitled cause, was denied a preliminary injunction against the said defendant, City of Hammond, in the
119 above entitled cause in said United States District Court for the District of Indiana, and from which interlocutory order and decree, denying and refusing to grant said preliminary injunction, the said plaintiff has appealed to the United States Circuit Court of Appeals for the Seventh Circuit;

Now, if the said Schappi Bus Line, Incorporated, a corporation, plaintiff in said cause as aforesaid, will duly prosecute its said appeal to effect, and abide by and pay all damages and costs, if any, which may be rendered or affirmed

against it in said cause on such appeal, then this obligation to be void, otherwise to be and remain in full force and effect.

SCHAPPI BUS LINE, INCORPORATED,
By: HENRY SCHAPPI (Seal)
President.
Principal.

Attest:
HENRY SCHAPPI, JR.,
Secretary.
UNITED STATES FIDELITY & GUARANTY CO.,
FRANK HAMMOND (Seal)
Its Resident Agent
Surety.

The foregoing appeal bond is approved as to form, amount, and sufficiency of surety, this 15th day of October, A. D. 1925.

THOMAS W. SLICK,
Judge of the United States District Court for the District of Indiana.

93 And, also, on said 15th day of October, A. D. 1925, the said plaintiff filed in the office of the Clerk of said Court a signed waiver of the defendant, City of Hammond, a municipal corporation, waiving the provisions of Rule 75, Rules in Equity, relating to the preparation of the transcript of the record and the statement of evidence in this cause, which said waiver is in words and figures following, to-wit:—

94 * * * * * *

WAIVER OF PROVISIONS OF RULE 75, RULES IN EQUITY, BY DEFENDANT.

The plaintiff in the above entitled cause, having prepared and submitted to the attorneys for the defendant a statement of the record, and a transcript or statement of the evidence in the above entitled cause on the hearing for preliminary injunction, and the defendant, through its solicitors and attorneys, having examined same, do hereby waive the provisions in Rule 75 of the Equity Rules, the provision for the filing of praecipe, indicating the portions of the record to be incorporated into the transcript on such appeal, and that such statement of the evidence shall be lodged in the office of the Clerk for a period of ten (10) days; and hereby con-

sent to the approval of such statement of the evidence by the Judge of the United States District Court for the District of Indiana, and the filing of the same thereof in the Clerk's
95 office of said Court, to be embodied as a part of the record in said cause, for the purpose of appeal.

W. W. McMahon,
City Attorney,
Attorneys for Defendant, City of Hammond.

Dated this 14th day of October, A. D. 1925.

123 And afterwards, to-wit:—On the 16th Day of October, A. D. 1925, the following further proceedings were had and entered of record in this cause, to-wit:—

* * * * * *

Comes now the plaintiff, Schappi Bus Line, Incorporated, a corporation, and gles herein its written praecipe for a transcript of the proceedings and record in this cause, to be used on appeal to the United States Circuit Court of Appeals for the Seventh Circuit, together with the acknowledgment of receipt of copy of same by the defendant, which said praecipe and acknowledgment of service of same is in these words, to-wit:—

124 * * * * * *

t. 16, PRAECIPE FOR TRANSCRIPT OF RECORD AND STATEMENT OF EVIDENCE, ETC., TO BE USED ON APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To: William P. Kappes, Clerk of United States District Court for the District of Indiana:—

You are hereby requested to prepare and certify a full, true, and entire transcript of the proceedings and record in the above entitled cause, and to include therein all orders and entries, all papers and pleadings filed, and on file, all order book entries and rulings, the statement of evidence or the bill of exceptions containing the evidence, and the interlocutory order or decree denying a preliminary injunction, en-

tered in said cause on the 21st day of September, A. D. 1925, and all other papers, documents, and record necessary to make a complete transcript of the proceedings and record in said cause filed, and on file, in your office, to be used on appeal to the United States Circuit Court of Appeals for the Seventh Circuit, including in said transcript each of the following papers, pleadings, and orders, to-wit:—

125 (1). Plaintiff's verified complaint filed in said cause, which was also introduced in evidence as Plaintiff's Exhibit 1 on the hearing for a temporary injunction.

(2). Plaintiff's motion for a preliminary injunction.

(3). Defendant's answer to plaintiff's verified complaint, which answer was also introduced in evidence as Plaintiff's Exhibit 2.

(4). All orders and entries made in said cause relating to the hearing for a temporary injunction, together with the interlocutory order entered on the 21st day of September, A. D. 1925, denying such temporary injunction.

(5). The statement of the evidence, or bill of exceptions, as approved by the Judge of said Court, and filed in said cause.

(6). The waiver of defendant of the provisions of Rule 75 In Equity as to the preparation of transcript and statement of the evidence for appeal.

(7). The notice given by plaintiff to defendant of the appeal, with acknowledgement of service of same.

(8). Plaintiff's petition for appeal, and the allowance of same by the Judge.

(9). The Assignment of Errors.

(10). The appeal bond.

(11). A copy of this praecipe together with the acknowledgement of receipt of copy of same by defendant.

(12). The citation to the defendant on this appeal, together with the acknowledgement of service of same.

126 And you are requested to prepare said transcript, and duly certify to the same, to be used as the transcript of the record on appeal from said interlocutory order or decree denying and refusing to grant a temporary injunction in the above entitled cause to the Circuit Court of Appeals of the United States, for the Seventh Circuit.

Dated this 16th day of October, A. D. 1925.

W. J. WHINERY
Attorney for Plaintiffs.

The defendant, City of Hammond, a municipal corporation,

in the above entitled cause, by its attorneys of record in said cause, hereby acknowledges service of a copy of the foregoing praecipe, and waives all the provisions of Rule 75 In Equity, relating to the preparation of the record and statement of the evidence, to be used on appeal, for the reason that heretofore plaintiff's counsel has prepared, and furnished to counsel for the defendant, a copy of the record and statement of the evidence for examination, and which has been approved by the attorneys for the defendant, for use on such appeal.

Dated this 16th day of October, A. D. 1925.

WM. W. MCMAHON
Attorney for Defendant.

127 * * * * * *

CERTIFICATE OF CLERK TO TRANSCRIPT.

I, William P. Kappes, Clerk of the United States District Court, in and for the District of Indiana, do hereby certify and return to the claim of appeal of the plaintiff, Schappi Bus Line, Incorporated, a corporation, in a cause pending in said Court, wherein the said Schappi Bus Line, Incorporated, a corporation, is plaintiff, and the City of Hammond, a municipal Corporation, is defendant, that the above and foregoing is a full, true, and complete transcript and copy of the record, and of all papers filed, and proceedings had and entered in said cause, as the same appear on file, and of record, in my office; that I have compared the same with the originals, and they are true, and correct transcripts therefrom, and of the whole thereof, all as required by the above and foregoing praecipe.

In Testimony Whereof I have hereunto set my hand
128 and affixed the seal of said Court at Hammond in said District this 16th day of October, A. D. 1925, and of the Independence of the United States of America, the 149th.

WILLIAM P. KAPPES,
(Seal) *Clerk of the United States District Court for the District of Indiana.*
By MAUDE B. SWANK,
Deputy Clerk.

Cost of transcript $61.35. Paid by plaintiff 10/16/25.

MAUDE B. SWANK,
Deputy Clerk.

120 And afterwards, to-yit:—On the 16th day of October, A. D. 1925, the following further proceedings were had and entered of record in this cause, to-wit:—

* * * * * *

Comes now the plaintiff, Schappi Bus Line, Incorporated, a corporation, and gles herein the citation to the City of Hammond, defendant herein, issued by the Judge of said Court on the 15th day of October, A. D. 1925, together with the acknowledgement of service of said citation upon said defendant, City of Hammond, a municipal corporation, on said day, which citation and acknowledgement of service of same is in these words and figures, to-wit:—

121 * * * * * *

CITATION TO CITY OF HAMMOND, DEFENDANT.

To the City of Hammond, a municipal corporation, Defendant in the above entitled cause, Greeting:—

Whereas, Schappi Bus Line, Incorporated, a corporation, plaintiff in the above entitled cause, has lately appealed to the United States Circuit Court of Appeals for the Seventh Circuit from an interlocutory decree, denying a preliminary injunction to said plaintiff against you in the above entitled cause, which interlocutory order and decree was lately rendered in the United States District Court for the District of Indiana, and which interlocutory order and decree, denying said injunction, was, by said Court, made in your favor; and the said Schappi Bus Line, Incorporated, a corporation as aforesaid, has filed the security required by law, and the orders of said Court, together with its petition for an ap-
122 peal, and Assignment of Errors, and which appeal has been allowed,—you are, therefore, hereby cited to be and appear before the said United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago, State of Illinois, on the 9th day of November, A. D. 1925 next, there to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the City of Hammond in the said District of Indiana this 15th day of October, A. D. 1925.

THOMAS W. SLICK,
Judge of the United States District Court for the District of Indiana.

We hereby acknowledge service of the foregoing citation for, and on behalf of, the said defendant, City of Hammond, a municipal corporation, this 16th day of October, A. D. 1925.

WM. W. MCMAHON,
Attorney for Defendant, City of Hammond, a municipal corporation.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 94, inclusive, contain a true copy of the Printed Record, printed under my supervision and filed November 2, 1925, on which the following entitled cause was heard and determined:

Schappi Bus Line, Incorporated

vs.

City of Hammond, a Municipal Corporation

No. 3668, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this First day of April A. D. 1926.

EDWARD M. HOLLOWAY,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the sixth day of October, 1925, of the October term in the year of our Lord one thousand nine hundred and twenty-five and of our Independence the one hundred and fiftieth.

And afterwards, to wit: On the seventeenth day of October, 1925, there was filed in the office of the clerk of this court an appearance of counsel for appellant, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 3668 October Term 1925.

Schappi Bus Line, Incorporated

—*vs*—

City of Hammond

The Clerk will enter my appearance as counsel for the plaintiff in error Schappi Bus Line, Incorporated.

WM. J. WHINERY
Hammond, Indiana.

Endorsed: Filed Oct. 17, 1925. Edward M. Holloway, Clerk.

And afterwards, to wit: On the twenty-third day of October, 1925, there was filed in the office of the clerk of this court an appearance of counsel for appellee, which said appearance is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 3668 October Term 1925.

Schappi Bus Line, Incorporated

Appellant

vs.

City of Hammond

Appellee

The Clerk will enter my appearance as Counsel for the Appellee.

GLENN D. PETERS
200 Ruff Bldg.
Hammond, Indiana.

BOMBERGER PETERS & MORTHLAND
Of Counsel.

Endorsed: Filed Oct. 23, 1925. Edward M. Holloway, Clerk.

And afterwards, to wit: On the twenty-eighth day of October, 1925, there was filed in the office of the clerk of this court an "Original Citation", which said citation is not copied here as the same appears in the Printed Record certified herewith, on pages 93 and 94.

And afterwards, to wit: On the fourteenth day of December, 1925, the following further proceedings were had and entered of record, to wit:

Monday, December 14, 1925.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Samuel Alschuler, Circuit Judge.

Schappi Bus Line, Inc.
3668 —*vs*—
City of Hammond, *et al.*
} Appeal from the District Court of the United States for the District of Indiana.

On motion of Mr. W. J. Whinery, counsel for appellant, it is now here ordered that this cause be, and the same is hereby set down for hearing on Tuesday, January 12, 1926.

And afterwards, to wit: On the twenty-fourth day of December, 1925, the following further proceedings were had and entered of record, to wit:

Thursday, December 24, 1925.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Schappi Bus Line, Inc.
3668 —*vs*—
City of Hammond, etc.
} Appeal from the District Court of the United States for the District of Indiana.

It is ordered by the court that this cause be, and the same is hereby re-set for hearing on Tuesday, January 26, 1926.

And afterwards, to wit: On the twenty-sixth day of January, 1926, the following further proceedings were had and entered of record, to wit:

Tuesday, January 26, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.

Schappi Bus Line, Incorporated,
3668 —*vs*—
City of Hammond, etc.

} Appeal from the District Court of the United States for the District of Indiana.

Now this day come the parties by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. William J. Whinery, counsel for appellant, and by Mr. L. L. Bomberger, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the twelfth day of March, 1926, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 3668. October Term, 1925, January Session, 1926.

Schappi Bus Line, Incorporated, *Appellant*,
vs.
City of Hammond, a Municipal Corporation, *Appellee*.

Appeal from the District Court of the United States for the District of Indiana.

(March 12, 1926)

Before EVANS, PAGE and ANDERSON, *Circuit Judges*.

Opinion by PAGE, *Cir. J.*

Appellant, incorporated under the laws of the state of Indiana, operates three bus lines, for each of which it has a certificate of public convenience and necessity from the Public Service Commission of Indiana. With the first line, it does a purely interstate business from 63rd and South Park Avenue, in the city of Chicago, Illinois, into appellee, a city of Indiana. The second line does business between Calumet City, Illinois, to and through appellee, and through a part of East Chicago, Indiana. The third line operates over public highways within appellee. All requirements of the laws of the state of Indiana were complied with.

Appellant's bill for injunction, to restrain appellee from interfering with the operation of its busses, was dismissed. The interference consisted of twenty or thirty arrests of appellant's chauffeurs on one charge and another, but all based on alleged violations of appellee's Ordinance No. 1945. The interference consisted, also, in the exclusion of certain of appellant's busses from certain streets altogether, and of preventing them from stopping anywhere within several miles of the business center of appellee for the purpose of loading and unloading passengers in the street.

Appellee admits the charge of interference, and insists that its acts will be repeated as often as necessary to prevent the operation of appellant's busses contrary to the provisions of appellee's said ordinance No. 1945, upon which it wholly relies for justification of its acts. It does not claim that any other rule, regulation, ordinance or provision is violated by appellant. The ordinance reads:

"An Ordinance Regulating and Routing Certain Vehicles for Hire and Prohibiting Their Use of Certain Streets Within the City of Hammond.

"Section 1. Be It Ordained by the Common Council of the City of Hammond, Indiana, that in order to promote public safety and order and to diminish the congestion of vehicular travel within said City, from and after the taking effect of this Ordinance, it shall be unlawful for any person, firm, or corporation owning or operating any motor vehicle engaged in transporting passengers for hire, to move or run such vehicle on, upon, or over any of the following parts of streets within said City of Hammond, to-wit:—

On Hohman Street from Russell Street to Michigan Avenue;

On State Street from Morton Court to Calumet Avenue;

On Sibley Street from the easterly line of the right-of-way of the Chicago, Indianapolis & Louisville Railway Company where the same crosses Sibley Street westerly to Morton Court;

On Fayette Street from Hohman Street to Oakley Avenue.

"Section 2. From and after the taking effect of this Ordinance, it shall be unlawful for any person, firm, or corporation, owning or operating any motor vehicle carrying passengers for hire, to stop such vehicle for the purpose of receiving or discharging passengers upon any street, alley, or other public place within said City; provided, that the Board of Public Works may, for any period not exceeding six months or successions thereof, permit such operation on any or all of the following designated parts of streets: Columbia Avenue between the South city limits and the right-of-way of the Michigan Central Railroad where the same crosses said Columbia Avenue: Sibley Street from Columbia Avenue to the Easterly line of the right-of-way of the Chicago, Indianapolis & Louisville Railway Company; State Line Street from its Southerly terminus to its Northerly terminus at or near the right-of-way of said Michigan Central Railroad aforesaid; Rimbach Avenue from State Line Street to Ann Street; Ann

Street from Rimbach Avenue to Russell Street; Russell Street from Ann Street to State Line Street, and for vehicles engaged strictly in interstate commerce any street or other public place North of 122nd Street and East of Calumet Avenue.

"Section 3. Whoever violates any of the provisions of Sections 1 and 2 of this Ordinance shall, upon conviction, be fined in any sum not exceeding Fifty ($50.00) for each and every offense, but nothing in this Ordinance shall be construed to impair the obligation of any contract to which the City is a party under which such motor vehicles are now operated for hire within said City. Nothing herein shall apply to taxicabs.

"Section 4. This Ordinance shall supplement such ordinances as are now in force, and repeal only so much of them or any part thereof as may be in direct conflict herewith."

While it is not expressly conceded that the following language in Section 3, "Nothing in this ordinance shall be construed to impair the obligation of any contract to which the city is a party under which such motor vehicles are now operated for hire within said city" was inserted for the express purpose of exempting the Calumet Motor Coach Company from compliance with the ordinance, yet it is conceded that that concern comes within the terms of that provision. It operates something like twenty motor busses for the carriage of passengers between the city of Chicago and appellee, and so far as operation within the corporate limits of appellee is concerned, operates under a contract to which appellee is a party. The Calumet Motor Coach Company has never been required to observe or comply with the terms of the ordinance, but has been permitted to and does use, without let or hinderance from appellee and the officials of appellee, the streets mentioned in Section 1, and to load and unload passengers in all of the streets where it operates at will, as appellee claims it has the right to do, and as appellee claims it had and has the right to authorize the Calumet Motor Coach Company to do.

There are several reasons why we are of opinion that the bill should not have been dismissed, but we deem it necessary to consider but one.

Without conceding the right of the city, in any event, to control the operation of motor busses under its police power, since the passage of the Moorhead Act and the Registration and Licensing Act, being Chapters 46 and 213 of the 1925 Acts of the Indiana General Assembly, we are of opinion that

the ordinance cannot be sustained as a police regulation,—and it is not claimed that it can be sustained upon any other theory. As the ordinance is drawn, there must be read into both Sections 1 and 2 the language of Section 3 above quoted, that is, after saying in Section 1 that it shall be unlawful to run on, upon, or over Hohman, State, Sibley and Fayette Streets, there must be read, "but nothing in this ordinance shall be construed to impair the obligation of any contract to which the city is a party under which such motor vehicles are now operated for hire within said city." The same must be the reading with reference to Section 2. Even police regulations must be fair and reasonable for all citizens alike, so far as may be, and without discrimination. The ordinance in question does not respond to these requirements. By its terms, it permits some concerns to do the identical things from the doing of which appellee claims it has the right, under the ordinance, to exclude appellant. Though not so written in the ordinance, the fair intendment of the whole record is that the ordinance was written not only for the purpose of permitting that condition of things, but for the purpose of enforcing it.

We are of opinion that the record does not show any valid reason for the passage of such an ordinance because of congestion in the streets. The record shows that there was a parking privilege on both sides of the streets in question of not less than an hour's limit, very generally availed of. It is a great strain upon the imagination to find justification for an ordinance excluding appellant from appellee's streets when, at the same time, unused vehicles are permitted to be parked for an hour at a time on both sides of the street and the Calumet Motor Coach Company is permitted to do all the things prohibited to appellant in the same streets. The record shows that one Clarence E. Dome, one of the appellant's chauffeurs, was prosecuted under said ordinance in the City Court of appellee, wherein the validity of the ordinance was put directly in issue, the City Court holding that the ordinance was unreasonable, illegal and void, as being in violation of the law of the land and the Constitution of the state of Indiana.

It was urged in oral argument that the contract between appellee and Calumet Motor Coach Company, by which the latter was permitted to operate, in the manner specified in that contract, in appellee's streets was a matter of no concern to appellant,—that appellee had the right to make such a con-

tract with one and to refuse to make it with another, or to refuse to make a contract at all except upon other and different terms. In the abstract, that probably is true, but the right to make such a contract, or to make it with one and not with the other, must not be confused with the obligation of appellee, when it undertook, in the exercise of its alleged police powers, to pass an ordinance to regulate traffic, to pass one that did not discriminate. It could not make its contract with the Calumet Motor Coach Company an excuse for not making that concern subject to the terms of the ordinance. If it had such police powers as it undertook to exercise, it had no right to barter them away to the Calumet Motor Coach Company.

We are of opinion that, for the reasons stated, the ordinance is illegal and void and the acts of appellee without justification, and that the decree of the District Court should be reversed, with directions to enter a decree granting the injunction.

And on the same day, to wit: On the twelfth day of March, 1926, the following further proceedings were had and entered of record, to wit:

Friday, March 12, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.
Edward M. Holloway, Clerk.
Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. George T. Page, Circuit Judge.
Hon. Albert B. Anderson, Circuit Judge.

Schappi Bus Line, Incorporated,
3668 —*vs*—
City of Hammond, a municipal corporation.

Appeal from the District Court of the United States for the District of Indiana.

This cause coming on to be heard on the transcript of the record from the District Court of the United States for the District of Indiana and was argued by counsel.

On consideration whereof: It is now here ordered, adjudged and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court with directions to enter a decree granting the injunction.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 97 to 106, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel) in the case of

Schappi Bus Line, Incorporated

vs.

City of Hammond, a Municipal Corporation

No. 3668, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this First day of April, A. D. 1926.

EDWARD M. HOLLOWAY,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4176)